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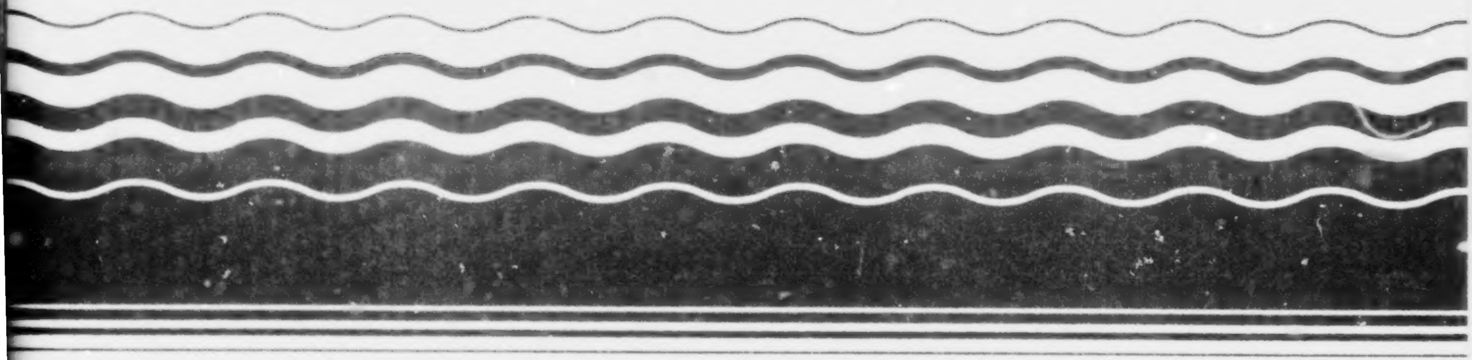

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SUPERFUND REMOVAL PROCEDURES

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Office of Emergancy and Remedial Response
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I. OVERVIEW OF THE SUPERFUND REMOVAL PROGRAM

The purpose of this chapter is to provide a brief introduction to the removal program. The first section discusses the statutory and regulatory requirements that apply to the removal program. The second describes the program objectives and scope, and the last section discusses the program organization, including the roles and responsibilities of EPA Headquarters, the Regions and special forces and teams.

I. OVERVIEW OF THE SUPERFUND REMOVAL PROGRAM

The focus of this document is on the specific procedures On-Scene Coordinators (OSCs) and other Superfund personnel should follow to conduct Superfund-financed removals in response to actual or threatened releases of hazardous substances, or pollutants or contaminants. Exhibit I-1, on the following page, provides an overview of those actions typically performed during a removal response. The procedures for conducting removal responses can best be understood, however, within the context of a brief discussion of program authorities, objectives and scope, and organization.

A. PROGRAM AUTHORITIES

The statutory authority for the Superfund removal program is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or "Superfund"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) and delegated under Executive Order 12580. Specific standards and procedures for implementing CERCLA and Section 311 of the Clean Water Act (CWA) and for conforming with other statutes are set forth in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR 300). Each of the principal program authorities is described below.

1. The Comprehensive Environmental Response, Compensation, and Liability Act, as Amended

Section 104 of CERCLA, as amended by SARA, authorizes the President to undertake responses to remove hazardous substances and pollutants and other contaminants from the air, soil, surface and ground water. CERCLA provides for both long-term actions, consistent with permanent remedy, known as remedial actions, and short-term actions known as removals, which are the subject of this document.

Section 101(23) of CERCLA broadly defines removals to include the cleanup or removal of released hazardous substances. Included in this definition are actions necessary to:

- Monitor, assess and evaluate the actual or threatened release
- Dispose of removed material
- Prevent, minimize or mitigate damage to the public health or welfare or to the environment from an actual or threatened release.

The principal statutory limitation on removals is that those activities not continue after the expenditure of $2 million or twelve months has elapsed from the initiation of response unless certain criteria are met. SARA raised the statutory limitations from $1 million and six months to $2 million and twelve months and added an additional exemption from these limitations: "where continued response action is otherwise appropriate and consistent with the remedial action to be taken." In addition, all removal actions, to the extent practicable, must contribute to the efficient performance of long-term remedial actions. Section B of this chapter briefly describes how these statutory authorities and requirements define the scope and objectives of the removal program.

Under Executive Order 12580, the President has delegated his removal response authorities to the U.S. Environmental Protection Agency (EPA), the U.S. Coast Guard (USCG) and all other Federal agencies. Section C of this chapter provides an overview of the roles and responsibilities of EPA personnel, while Chapter III, Section F.8, summarizes the roles of other Federal agencies at Superfund-financed removals at non-Federal facilities, and Chapter VI, Section A, discusses Federal agency lead removals at Federal facilities.

2. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR Part 300)

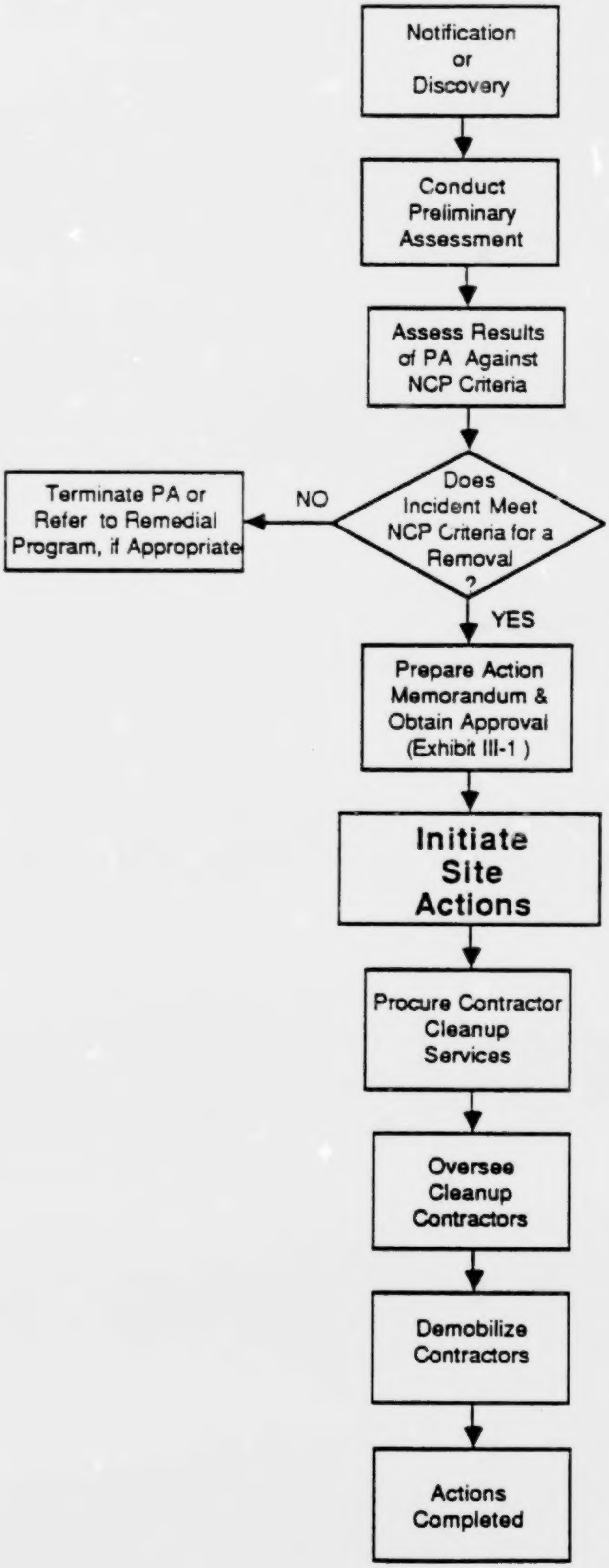
The NCP applies to all Federal agencies and is in effect for releases or substantial threats of releases of hazardous substances into the environment, and releases or substantial threats of releases of pollutants and contaminants that may present an imminent and substantial danger to public health or welfare. To the extent that CERCLA, as amended, conflicts with the existing NCP, the statute prevails. The NCP provides, among other things, for a division of responsibility among various levels of government, the appropriate role of private parties, and procedures for undertaking response operations under CERCLA. It establishes a broad set of procedures for response personnel to follow in assessing the need for a removal action and deciding whether to undertake a CERCLA-financed action or to pursue an enforcement action. Until revised in November 1985, the NCP had established two separate categories of removals, immediate removals and planned removals, with discrete triggers for response action. Because the distinction between these categories was difficult to make in practice and tended to impede expeditious response, the current NCP, effective February 19, 1986, establishes a single standard that must be met for any and all types of removal actions. This standard is discussed in Chapter III.A.

In addition, the NCP provides some guidelines for response documentation to support enforcement and cost recovery actions. These are presented in Chapter III.F.3. Other guidance on negotiation with and oversight of responsible party removal actions can be found in various EPA policy memoranda, which are discussed in Chapter V.

3. Related Authorities

For removal actions, EPA's policy is to pursue actions that to the greatest extent practicable considering the exigencies of the circumstances, attain or exceed applicable or relevant and appropriate Federal public health or environmental requirements. Other Federal

EXHIBIT I-1
Performing Fund-Financed Removal Actions


Notification or Discovery
Conduct Preliminary Assessment
Assess Results of PA Against NCP Criteria
Does Incident Meet NCP Criteria for a Removal ?
NO
Terminate PA or Refer to Remedial Program, if Appropriate
YES
Prepare Action Memorandum & Obtain Approval (Exhibit III-1)
Initiate Site Actions
Procure Contractor Cleanup Services
Oversee Cleanup Contractors
Demobilize Contractors
Actions Completed

criteria, advisories, and guidance and State standards also shall be considered, as appropriate, in formulating the removal action. EPA's current policy for Superfund adherence to these other environmental standards, criteria, guidelines and policies is set forth in OSWER directive #9234.0-05, "Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements" (July 9, 1987). In addition, OSWER is currently finalizing OSWER directive #9234.1-01, "CERCLA compliance with Other Laws," which provides supplemental guidance.

4. Superfund Policy and Guidance Documents

In addition to the basic program authorities, there are specific Superfund policy and guidance documents, such as this manual, that provide information on implementing various aspects of the removal program. These policy and guidance documents are referenced throughout this manual and address issues pertaining to compliance with other environmental laws; guidance on use of Department of Defense (DOD) facilities to store, treat, or dispose of non-DOD-owned explosives and other hazardous substances; Federal-lead underground storage tank corrective actions; State-lead removal actions; and engineering evaluation/cost analysis (EE/CA) guidance for non-time-critical removal actions.

B. PROGRAM OBJECTIVES AND SCOPE

While the removal program continues to provide expeditious relief from threats to human health and welfare and the environment, emphasis on alternative treatment technologies and new statutory requirements for consistency with remedial actions has expanded the program's goals to include longer-term solutions, with a preference for permanent remedies. Thus, the program's objectives are broad and its scope covers a wide variety of types of incidents and response activities.

1. Program Objectives

The procedures described throughout the remainder of this document are designed to assist response personnel in carrying out four objectives of the Superfund removal program:

- Directing Fund-financed responses -- Although the Agency's priority continues to be the stabilization of threats at National Priorities List (NPL) and non-NPL sites, removal actions must now, to the extent practicable, contribute to the efficient performance of any long-term remedial action. The primary purpose of this requirement is to improve the efficiency of removal actions by requiring response personnel to consider the long-term cleanup plan before selecting the removal action. In addition, OSWER has determined that certain longer-term removal actions required at NPL sites may be conducted by the remedial program. These actions, termed expedited response actions (ERAs), are designed to address those responses at NPL sites that were previously performed as initial remedial measures (e.g., fences, drainage controls, alternative water supplies). These actions are subject to all removal program requirements and require removal program concurrence. Chapters III and IV of this manual provide response personnel with detailed information on how to select, initiate, manage and complete a Fund-financed removal action. Chapter II describes annual and quarterly procedures for setting response activity targets and financial measures at NPL and non-NPL sites.

- Promoting and monitoring potentially responsible party cleanups -- Program policy is to encourage response personnel to secure private party actions whenever feasible in lieu of initiating use of the CERCLA Trust Fund. In addition, oversight of these actions is essential to ensuring compliance with CERCLA section 106 Administrative Orders (AO). Guidelines on potentially responsible party cleanups are discussed in Chapter V.

- Directing removals at Federally owned facilities -- Other Federal agencies have lead responsibility for undertaking and financing removal actions at their own facilities except emergencies at non-DOD and non-DOE facilities. If the other Federal agency requests assistance, EPA may initiate under an IAG or MOU a Fund-financed removal to be reimbursed by the responsible Federal agency. Chapter VI summarizes policies, procedures and responsibilities for removals at Federal facilities.

- Monitoring the performance of post removal site control activities -- Although most removals are designed to preclude the need for lengthy post-cleanup operation and maintenance, Regional personnel should revisit those locations at which such measures are in place. If the post removal site control (PRSC) mechanisms are not functioning properly, response officials should encourage State action or, if a sufficiently serious threat exists, should reinitiate a removal response. If a removal restart will exceed the statutory limitations on cost and/or duration, an exemption to these limits will be required (Note: PRSC activities count toward the statutory limitations). Chapter III, Section H.2 sets forth PRSC procedures.

2. Program Scope

The scope of the removal program can be defined in terms of the types of incidents and threats addressed, the range of hazardous substances and contaminants responded to, and types of response actions allowed. At the present time, the program encompasses releases from sites that are listed on the NPL, as well as those that are not. It covers types of incidents ranging from transportation accidents to releases at inactive facilities or waste sites. The program addresses diverse types of threats such as drinking water contamination, fire/explosion and direct contact, and encompasses over 7,000 substances.

Historically, removal program actions have been limited largely to surface cleanup actions that would mitigate "imminent and substantial threats." Broadened authorities under the current NCP, however, provide removal response personnel with more latitude to abate general threats. For example, OSCs may initiate a removal action in response to a threat of release of hazardous substances and may also undertake actions previously categorized as initial remedial measures.

As noted earlier, new provisions in CERCLA emphasize selecting removal actions that are consistent with longer-term remedial actions, thus placing greater importance on removal and remedial program coordination: CERCLA section 104 requires, to the extent practicable, that all removal actions contribute to the efficient performance of any long-term remedial action and allows a waiver to the statutory limitations if continued response action is otherwise appropriate and consistent with remedial action.

For additional information on new program requirements under CERCLA, as amended, OSCs should refer to Chapter III of this manual; OSWER directive #9360.0-12, "Guidance on Implementation of the Revised Statutory Limits on Removal Actions" (April 6, 1987); and OSWER directive #9360.0-13, "Guidance on Implementation of the 'Contribute to Remedial Performance Provisions'" (April 6, 1987). OSCs should also refer to OSWER directive #9360.0-6A, "Relationship of the Removal and Remedial Programs under the Revised NCP" (March 17, 1986), for more information on removal and remedial program coordination.

C. PROGRAM ORGANIZATION

The NCP establishes an organizational framework for planning and conducting all Superfund response activities including removals. This framework defines the roles, responsibilities and interrelationships among EPA, all other Federal agencies, the States and several specialized government response teams.

This section of the procedures manual focuses on those organizational aspects most pertinent to EPA's role as national manager for the Superfund removal program. Thus, it first summarizes the organization and functions of various EPA offices and resources, and then outlines the roles and responsibilities of the National Response Team (NRT), Regional Response Team (RRT), and other special forces and teams.

1. Headquarters Roles and Responsibilities

Responsibility for providing overall policy, guidance and direction for EPA's Superfund program rests with the Assistant Administrator (AA) for the Office of Solid Waste and Emergency Response (OSWER). In addition, the AA, OSWER is the approval or concurrence official for all removals costing over $2 million, and, in accordance with Delegation 14-1-A (Appendix 8), the AA, OSWER or his/her designee must concur prior to the initiation of a removal action at non-NPL sites where the proposed action is precedent-setting or of national significance.

Two offices within OSWER play major roles in implementing the Superfund program. The Office of Emergency and Remedial Response (OERR) develops national strategies and provides direction, guidance and oversight of Regional response activities in accordance with statutory authorities. The Office of Waste Programs Enforcement (OWPE) develops enforcement objectives and strategies and provides guidance to enforcement staff in EPA's ten Regional offices.

Within OERR, responsibility for managing the CERCLA removal program rests with the Emergency Response Division (ERD). Specific responsibilities of ERD are:

- Program Planning and Management -- includes target-setting, accomplishments tracking, budgeting, resource allocation and other activities to ensure consistent implementation from Region to Region. More specific descriptions of those activities are in Chapter II.

- Response Operations Management -- ensures that removal actions are in accordance with all statutory, regulatory, policy and procedural requirements. Regional Coordinators within ERD serve as the principal points of contact for OSCs and have responsibility for providing advice and for coordinating Headquarters approvals.

- Guidance Development -- provides all participants in response actions with a common body of information on what actions can be taken, when, by whom and how. Examples of guidance include: "Removal Action Levels for Drinking Water Contamination Sites" (OSWER directive #9360.1-10); "Guidance for Conducting Federal-lead Underground Storage Tank Corrective Actions" (OSWER directive #9360.0-16A); and "Administrative Records for Decisions on Selection of CERCLA Response Actions" (OSWER directive #9833.3).

- Contracts Management -- the Technical Assistance Team (TAT) and Emergency Response Cleanup Services (ERCS) Project Officers in ERD ensure the availability of adequate technical support and cleanup services; develop procedures for effective, efficient use of contracts; and evaluate the adequacy of those procedures. Chapter III.D outlines procedures for utilizing contract resources.

- Regulation Development -- entails the promulgation of rules required by CERCLA on reportable quantities, designated substances and continuous releases, and notification of releases from facilities as well as local government reimbursement and worker safety regulations required under SARA.

2. Regional Roles and Responsibilities

Under the current delegations of program authorities, EPA's Regional offices have most of the responsibility for day-to-day operation of the removal program. They are responsible for virtually all phases of evaluating releases of hazardous substances, as well as obtaining response approval from Headquarters, when necessary, and conducting the response. While specific organizational structures and operating procedures vary from Region to Region, all Regions perform the following program functions:

- Release evaluation including the receipt and screening of notifications and the collection and review of field data
- Response selection encompassing responsible party search and negotiation, determination of need for Federal action, preparation of Action Memoranda and approval of responses up to $2 million and/or up to or exceeding twelve months in duration
- Response management covering issuance of work assignments and delivery orders to contractors, oversight of contractors, cost control and documentation, implementation of Interagency Agreements (IAGs), designation of post removal site control procedures and project closeouts
- Response preparedness including coordination of the Regional Response Teams, contingency planning, and in-house training
- Contracts management such as ensuring implementation of appropriate procedures for mobilizing and overseeing contractors, processing invoices and progress reports and evaluating contractor performance.

3. The Environmental Response Team (ERT)

The ERT can provide access to special decontamination equipment for chemical releases and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material. The ERT can also provide both introductory and intermediate training courses for response personnel and is a source of information and advice on alternative/innovative technology. OSC or RRT requests for ERT support should be made to the EPA representative to the RRT, the ERD Director, or the appropriate EPA Regional emergency coordinator.

4. The National Response Team (NRT)

The NRT consists of representatives from Federal agencies listed in section 1(a)(2) of E.O. 12580 and any other agencies that request membership. The EPA representative serves as the chairman, and the USCG representative is the vice chairman, except during periods of activation for response. Then EPA serves as chairman for inland responses and the USCG for responses to incidents in the coastal zone.

Activities the NRT may undertake include:

- Evaluation of response methods and recommendations to improve response capabilities
- Recommending changes to the NCP
- Advising on the training, equipping and protecting of response teams
- Recommendations for research, development and demonstration
- Planning and preparedness activities
- Consideration of matters referred by the RRT.

Chapter III.C.2 discusses specific procedures for OSC coordination with the NRT during a removal response.

5. The Regional Response Teams (RRTs)

RRTs are the appropriate Regional mechanism for preresponse planning and preparedness activities as well as for coordination and advice during response actions. The two principal components of the RRT are:

- Ten standing teams consisting of designated representatives from each participating Federal agency, State government and local government. The jurisdiction of each standing team corresponds to the standard Federal Regions, except for Alaska and the Caribbean area, which also have standing RRTs. The role of the standing RRT includes Region-wide communications, planning, coordination, training, evaluation and preparedness.
- Incident-specific teams for which participation relates to the technical nature and location of the incident. The RRT chairman for the incident determines the appropriate levels of activation, including participation by State and local governments. A complete description of the RRT appears in section 300.32 of the NCP and Chapter III.C.2 sets forth procedures for OSC coordination with the RRT for removal responses. Additional information on RRT activities is found in section 300.34 of the NCP, Special Forces and Teams.

6. Special Forces and Teams

The NCP identifies the following additional Federal resources for response:

- The National Strike Force consists of the Strike Teams established by the USCG on the Pacific and Gulf coasts (NOTE: the USCG Atlantic Strike Force and Dive Team has been disbanded). These teams can provide a variety of response support services including: communications, technical advice and assistance, specialized equipment, training and contingency planning. OSCs may request Strike Team assistance from the Commanding Officer of the appropriate team, the USCG member of the RRT, the appropriate USCG Area Commander or the Commandant of the USCG through the National Response Center (NRC).

- Scientific Support Coordinators (SSC) are available at the request of the OSC to assist with responses to releases of hazardous substances, pollutants or contaminants. The SSC also provides scientific support for the development of regional and local contingency plans. Generally the National Oceanic and Atmospheric Administration (NOAA) provides SSCs in coastal and marine areas, while EPA provides them in inland regions. To receive scientific support, the OSC should contact the SSC directly. If the OSC does not know the name of the SSC assigned to his/her Region, he/she should contact NOAA by writing to NOAA/HMRD, 7600 Sand Point Way NE, Seattle, Washington, 98115 or by calling (206) 526-6317. During a response action, the SSC serves under the direction of the OSC and is responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending upon the nature of the incident, the SSC can be expected to provide certain specialized expertise; work as a liaison to government agencies, universities, community representatives and industry; and compile information pertinent to assessing the hazards and potential effects of releases and to developing response strategies.

  At the OSC's request, the SSC will serve as the principal liaison for scientific information and attempt to reach a consensus on scientific issues while ensuring that differing opinions are communicated to the OSC. Further, the SSC will assist the OSC in responding to requests for assistance from the State and Federal agencies regarding scientific studies and environmental assessments.

- The USCG Public Information Assistance Team and the EPA Public Affairs Assistance Team are made available through the NRC to assist OSCs and Regional offices in meeting demands for public information and participation.

7. EPA Contract Resources

The removal program can utilize the services of five sets of contractors: the Technical Assistance Team (TAT), the Emergency Response Cleanup Services contracts (ERCS), remedial planning contracts (REM/FIT), the National Contract Laboratory Program (NCLP) and the Technical Enforcement Services contracts (TES). Each is described briefly below:

- TAT -- This contract is designed to provide EPA HQ and the Regions with a broad range of technical support services, for both the oil and hazardous substance release portions of the emergency response program. Examples are sampling, procurement of field and laboratory analyses, community relations, contingency planning, training, data management and quality assurance. The TAT provides support services for a prevention program, response preparedness, emergency response and special projects. Chapter III provides procedures for utilizing the TAT on a routine basis, and Section III.D.2 discusses procedures for TAT special projects.

- ERCS -- This contract provides actual cleanup services in response to releases of hazardous substances. At the present time, EPA has awarded one Delivery Order Contract for each of four geographic zones. The contracts provide for a zone management effort and enumerate the necessary personnel, equipment, cleanup services and response times. In addition to the current four zone contractors, there are procurements underway for more than 30 Regional ERCS contractors who perform similar services but have smaller resource capacities and cover more localized geographical areas.
Chapter III.D.1.a summarizes procedures for tapping the zone ERCS and Regional ERCS.

- REM/FIT -- REM contracts are appropriate for removals at NPL sites that are not time-critical. They provide technical and management support for EPA's field investigation and remedial planning activities at NPL hazardous waste sites having uncontrolled releases. Under the current REM contract, contractors are authorized to undertake necessary emergency removal measures as directed at sites where a remedial action is in progress. FIT can be used to perform site investigations in special circumstances, especially where ground-water pollution is an issue. Chapter III.D.1.b elaborates on REM processes.

- NCLP -- The NCLP is a nationwide network of chemical analytical laboratory facilities that provide state-of-the-art standardized and specialized chemical analysis services of known quality. These services support various Superfund sampling activities ranging from those associated with a relatively small preliminary assessment to those required at a complex cleanup. The program includes routine analytical services for organic and inorganic compounds in standard matrices; routine analytical services for dioxin; high-hazard sample preparation prior to laboratory analysis; and special analytic services consisting of non-standardized analysis for organic and inorganic compounds in a variety of matrices. OSCs requiring NCLP support should contact the Regional Sample Control Center (RSCC), which schedules all requests. The RSCC is housed in each Region's Environmental Services Division (ESD). For time-critical releases, the NCLP turnaround may not be quick enough; in those cases laboratory analyses often are conducted by the ESD laboratories. In special situations requiring quick turnaround analyses over an extended period of time, the OSC should contact his/her Regional Coordinator to arrange for an analysis contract through the Hazardous Site Evaluation Division (HSED), Sample Management Office.

- TES -- Technical Enforcement Services contractors provide EPA capabilities that are unique to the enforcement function. These include potentially responsible party searches and investigations, title searches, obtaining and analyzing financial records, facility inspections per OSWER's "Off-site Policy," and general case development support. These services are coordinated through the EPA Office of Waste Programs Enforcement and the Regional Resource Conservation and Recovery Act (RCRA) enforcement offices.

In addition to the contract mechanisms discussed above, EPA is also pursuing use of site- and media-specific contracts. These contract mechanisms are intended to be used in situations where there is sufficient time for competitive contracting procedures.

8. State and Local Participation

Under section 300.24 of the NCP, each State governor is requested to assign an office or agency to represent the State on the appropriate RRT. This representative may participate fully in all RRT activities. In addition the State is encouraged to:

- Designate the element of the State government that will direct State-supervised response operations

- Include contingency planning for responses, consistent with the NCP and Regional Contingency Plans, in all emergency and disaster planning

- Use State authorities to compel potentially responsible parties to undertake response actions, or to undertake response actions that are not eligible for Federal funding.

Since State and local public safety organizations will normally be the first government representatives at the scene of a release, they are expected to:

- Initiate public safety measures to protect public health and welfare

- Be responsible for directing evacuations pursuant to existing State/local procedures.

Furthermore, States may enter into contracts or Cooperative Agreements pursuant to sections 104(c)(3) and (d) of CERCLA, as amended by SARA, to undertake Fund-financed response actions, when the Federal government determines that the State has the capability. A State agency acting under a Cooperative Agreement is referred to as the "lead agency." With the broadened definition of removals, OERR has developed policy and procedures for executing Cooperative Agreements with States for removal actions "Guidance for State-lead Removals," OSWER directive #9375.1-4-W, July 10, 1987).

II. PROGRAM PLANNING AND TRACKING

The purpose of this chapter is to provide all removal program personnel in Headquarters and the Regions with a common understanding of their respective roles and responsibilities for program planning and tracking. The first section of this chapter describes the function and use of the various systems used by ERD. The sections following provide guidance on the process for tracking accomplishments, setting activity and financial targets, and determining Regional budget allocations and managing Regional program allowances.

II. PROGRAM PLANNING AND TRACKING

EPA has a number of information management systems that monitor and report on all Superfund program activities. These interrelated systems provide the Superfund-wide programs, and more specifically, the removal program, with a mechanism for planning and tracking response activities to ensure they are consistent with the program authorities and objectives described in Chapter I. They also provide the means to project future response activities. Planning functions include setting annual/quarterly and Region-specific targets and allocating resources to the Regions. Prior to the start of each fiscal year, comprehensive guidance packages are distributed Agency-wide by the Budget Forecasting Section (BFS) for each of these activities.

A. SUPERFUND INFORMATION MANAGEMENT SYSTEMS

EPA has established several distinct but interrelated systems for documenting and tracking removal activities from the initial notification of release through the completion of the response. These systems each perform a variety of functions, which are described below. Together they form a comprehensive database that ERD personnel can use to project future Regional removal activities; assess Regional performance; generate biweekly, monthly and annual status reports; and produce reports in response to inquiries from within EPA, Congress or the public.

1. Notification -- ERNS

The Emergency Response Notification System (ERNS) is a nationwide, centralized database supported by the EPA, the U.S Coast Guard and the Department of Transportation and maintained by the Transportation Systems Center (TSC). ERNS was established to meet the legal requirement set forth in the NCP, CERCLA, the Clean Water Act, and the Outer Continental Shelf Lands Act for a standardized interagency system for reporting unscheduled releases of oil or hazardous substances into the environment. This information-sharing network documents every release notification received by the National Response Center (NRC), EPA Headquarters and Regional offices, and USCG.

The ERNS database is designed to provide both data regarding specific releases and aggregate data on the number and types of releases throughout the nation and in specific States and localities. TSC provides EPA Headquarters with annual reports that are used to forecast Regional equipment and personnel needs. When fully operational, the database will generate release incident data to support EPA Headquarters and Regional response operations planning and management functions, including resource allocation, response preparedness and crisis management.

ERNS is a documenting system, not a tracking system. Only the initial notification of release is documented, not the actions performed on the site. In addition, ERNS is a more inclusive database in the sense that it contains information on every reported release (including releases of nonhazardous substances and releases below RQ levels), not only those that result in removal actions. Additional information on the notification process can be found in Chapter III, Section C.

2. Removal Program Planning and Tracking -- The RTS/SCAP System

The Removal Tracking System/Superfund Comprehensive Accomplishments Plan (the RTS/SCAP system) is a program-specific planning and tracking tool. The RTS/SCAP system is maintained by ERD and is the repository for all current fiscal year and historical site-specific information on removal start and completion dates, threats to the environment, financial obligations, site conditions and response actions.

Headquarters ERD uses the RTS/SCAP system to manage Regional removal activity planning, monitoring and reporting. ERD Regional Coordinators in Headquarters work closely with the Regions to develop annual targets and quarterly incident-specific targets. In order to track ongoing site activities, OSCs report site-specific incidents as they occur to the Regional Coordinators, who review all data before it is entered into the RTS/SCAP system. ERD then uses the RTS/SCAP database to generate the following reports:

- The RTS matrix is a biweekly report that summarizes Regional removal activity for the fiscal year. For each removal site, the matrix contains the site name, location, site/spill identification number, NPL status at the start of the action, approval authority, lead agency, Regional and Headquarters point of contact, start and completion dates, approval dates, ceilings and obligations to date, as well as a narrative site description. The narrative contains information on the incident including the materials involved, threats to public health or the environment and a summary of actions taken on the site. Regional Coordinators review the matrix to ensure that Regional activities are consistent with program authorities (i.e., the proper approvals are obtained and project ceilings and statutory limitations are not exceeded).

- Financial reports are produced monthly and display current fiscal year and historical financial information. The financial transactions are recorded in the Financial Management System (FMS). Entries are then recorded in the Remedial and Removal Financial System (RRFS) and electronically transferred to the RTS/SCAP system. The reports provide information site-specifically and are monitored against the current Regional removal allowance. Regional Coordinators use the financial reports to verify the data received from the Regions against the data contained at Headquarters.

- Removal SCAP Reports present information on removal program targets and accomplishments on an incident-specific and aggregate basis. Program targets for activity levels are established by Headquarters and the Regions at the beginning of each fiscal year. Removal targets are tracked in the RTS/SCAP system against program accomplishments. At the end of each quarter, the Regions update the SCAP reports with incident-specific projections for the next quarter based on anticipated needs for response. The annual and quarterly removal SCAP reports are used by ERD management to monitor program progress in meeting targets and to project the future needs of the removal program.

In addition to the scheduled reports described above, the RTS/SCAP system database is used to generate reports in response to special requests for both incident-specific and aggregate data from within EPA Headquarters and Congress and in response to Freedom of Information Act requests.

3. Superfund Program Planning and Tracking -- Integrated SCAP

The integrated SCAP is the Superfund program's central planning mechanism. It compiles targets and accomplishments data for pre-remedial and remedial, removal, laboratory analysis, community relations and enforcement activities. The different program-specific SCAP processes and reports, once generated separately, recently were integrated and consolidated to provide better overall site project management and planning. The Budget Forecasting Section manages the integrated SCAP process and generates SCAP reports that provide the basis for a large part of the Superfund program's budget. Workload models, using SCAP data elements, are the basis for the distribution of full-time equivalents (FTEs) for each program and Region prior to final negotiations of targets (an FTE is a workload factor that is used to determine annual personnel requirements).

The removal program is responsible for maintaining the removal SCAP through the RTS/SCAP system, as described above. Each quarter, ERD supplies BFS with its most current data files to be merged with the other program offices' data to produce the integrated SCAP. Additional information on SCAP reports and program planning can be found in OSWER Directive 9200.3-1, Superfund Comprehensive Accomplishments Plan Manual (November 1986) and in Section B of this chapter.

4. Program Evaluation -- SPMS

The Strategic Planning and Management System (SPMS) is an Agency-wide tool that is used for management oversight. The Office of Management Systems Evaluation (OMSE) developed the SPMS to evaluate the progress of Agency programs throughout the fiscal year against quarterly and annual targets established before the start of each new fiscal year.

The Office of Program Management (OPM) generates the quarterly and annual reports from data files copied from databases maintained by ERD and the Hazardous Site Control Division (HSCD). In order to track the progress of the removal program against Superfund program goals, OPM copies data from the RTS/SCAP system and compiles the following information from that data:

- First removal starts at NPL sites
- Subsequent starts at NPL sites
- Removal stabilizations at NPL sites.

After generating the initial quarterly reports, OPM forwards copies to the Regions to confirm the accuracy of the data. Any discrepancies are resolved by OPM, the Regions and Headquarters program offices. Final SPMS reports are submitted to the AA, OSWER for review and evaluation.

SPMS removal program targets are a subset of SCAP targets and are tracked through the RTS/SCAP system. SPMS reports duplicate data contained in the SCAP; however, SPMS reports are used for program evaluation rather than program planning. SPMS targets, therefore, remain constant throughout the year, although they may be amended at mid-year (March/April), whereas removal SCAP targets are adjusted quarterly.

5. Superfund Comprehensive Planning and Tracking System Through CERCLIS

The Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS), which is currently being implemented, is intended to consolidate the functions of all the systems described above. CERCLIS will be maintained on a mainframe computer and will function as a comprehensive planning and tracking system for the entire Superfund program. CERCLIS will differ from the integrated SCAP system currently in place in that the Regions will be able to access RTS/SCAP data directly and will be responsible for entering their own data using microcomputers tied into the Headquarters system (Note: In the future, some Regions may be able to use minicomputers to access CERCLIS). Regional data input will provide for more accurate reporting and will also reduce the amount of time required to prepare reports. The CERCLIS and integrated SCAP will initially operate together, but CERCLIS will eventually supersede the current system.

6. Superfund Emergency Response Actions — Historical Database

The Superfund Emergency Response Actions database is a public information tool designed to provide information in response to public inquiries. ERD developed the database to facilitate the retrieval of historic, site-specific information. ERD maintains the database and annually provides each Region with a hard copy of a Regional report and accompanying Status Sheets. The Regional report contains historic data on all removal activities completed in that Region through the end of the previous fiscal year. For each completed removal, the database contains the following information:

- Region
- Site name
- Location
- NPL status at the time of removal completion
- Incident category
- Threat category
- Mitigative actions
- Cost.

The Status Sheets include all data on the historical database plus a narrative detailing site conditions and response activities for each removal.

Although the historical database and the RTS/SCAP system contain similar information, the purpose and scope of the two systems are different. Unlike the RTS/SCAP system, the Superfund Emergency Response Actions database is not intended to be a program management tool and does not track ongoing removal actions. Rather, the historical database documents completed removals and the narrative sections of the status sheets generally provide more in-depth information than the RTS matrix. In addition, Headquarters updates the historical database annually, based on data contained in the RTS/SCAP system and ERD site files, and does not require further Regional input.

B. PROGRAM PLANNING

Removal program planning occurs on a fiscal year basis and includes quarterly adjustments. Planning of removal program activities is primarily by means of the removal SCAP and entails setting targets and measures. Targets are activities that can be planned in advance or are set as program goals (e.g., NPL removal starts, NPL stabilizations). Measures, on the other hand, represent activities that cannot be planned but are important milestones in the program management process (e.g., release notifications). The primary purpose of the SCAP is to enable Headquarters and the Regions to agree on the number of responses to be funded and estimate the fiscal year costs of those responses. Program planning also serves as the basis for allocating funds to Regions as discussed in Section D of this chapter.

The success of the SCAP as a program planning tool requires close cooperation and interaction among Headquarters and Regional personnel. Below is a brief summary of their respective roles and responsibilities.

1. Headquarters Roles and Responsibilities

Headquarters is responsible for developing and maintaining a planning system through which Regional and national Superfund targets and objectives are developed and compiled into the SCAP database. Generally, EPA guides the target-setting process and is responsible for compiling Regional and national target data, merging the program offices' data, generating consolidated SCAP reports, and determining Regional resource allocations and allowances. Distribution of these responsibilities among the AA, OSWER; BFS; the Director, OERR; and ERD is described below.

The AA, OSWER is responsible for providing guidance on annual program objectives. The AA also approves the final activity targets and funding levels allocated to each Region. Each quarter, the AA reviews and approves the Regions' new projections and any adjustments to resource allocations.

BFS is the point of contact in Headquarters for SCAP and generates the integrated SCAP reports. BFS coordinates distributing the draft reports and the reports marked up with Regional comments to the appropriate Regions and program offices. After all adjustments to the SCAP have been made and entered into the system by the appropriate program offices, BFS generates and distributes the revised integrated reports to Headquarters offices and the Regions.

ERD coordinates developing and maintaining the removal SCAP. ERD is responsible for maintaining removal data and revising activity schedules and obligation information as it occurs during the quarter. Regional Coordinators are available to provide guidance to the Regions for setting initial removal activity targets and updating quarterly projections included in SCAP. At the end of each quarter, ERD supplies BFS with the most current SCAP data files. After the Regions return marked-up draft SCAP reports to BFS, the draft reports are forwarded to ERD Regional Coordinators for review. Regional Coordinators then meet with the Headquarters Superfund program offices to discuss Regional SCAP revisions and activity targets. Any required negotiations between Headquarters and the Regions will be conducted by the Regional Coordinators. ERD then is responsible for submitting updated data files to BFS.

2. Regional Roles and Responsibilities

The principal role of the Regions in the program planning process is to establish annual removal activity targets and to revise these targets as appropriate. The Regions are required to submit their initial numeric activity targets before the start of each fiscal year. The Regions then work with ERD and the Director, OERR to finalize the targets and determine budget allocation. Each Region is then expected to maintain its SCAP/SPMS data during the quarter. At the end of each quarter, Headquarters asks the Regions to revise the quarterly SCAP reports with projections for the next quarter's site-specific activity and financial needs to ensure that each Region has sufficient funds to maintain removal activities.

C. PROGRAM TRACKING

Headquarters monitors and tracks Regional activity on a biweekly and quarterly basis using the RTS/SCAP system. The purpose of this tracking is to:

- Ensure adherence to statutory, regulatory, policy and operational requirements

- Compare accomplishments against targets
- Adjust Regional resources as needed
- Respond to inquiries on program status from within and outside the Agency.

Successful program tracking requires accurate Regional reporting of removal activity and expenditures on a daily basis. This information then is incorporated into the RTS/SCAP system to monitor accomplishments to date against targets. Headquarters and Regional roles and responsibilities for program tracking are described below.

1. Headquarters Roles and Responsibilities

Headquarters maintains and updates the program-wide tracking systems utilized by senior management to evaluate program status and to adjust program targets and resource needs. This involves compiling Regional removal activity data throughout the fiscal year, updating the RTS/SCAP database and generating periodic accomplishments reports and revised removal projections.

The AA, OSWER has responsibility for monitoring removal activities throughout the fiscal year and for making appropriate adjustments in resources available to the Regions. The AA accomplishes this through a review of summary reports ERD has prepared from data submitted by the Regions. SPMS reports list by Region the number of removal first starts at NPL sites, removal subsequent starts at NPL sites and NPL sites stabilized by a removal action (see Appendix 1).

ERD serves as the liaison between the Regions and the Director, OERR and the AA, OSWER. One of ERD's ongoing responsibilities is for Regional Coordinators to compile removal activity information biweekly for a variety of purposes including Response Operations Branch (ROB) operations and management briefings. ERD maintains this information in the RTS/SCAP system and, at the end of each quarter, submits the data files to BFS to be integrated into SCAP reports. Site-specific SCAP reports, as shown in Appendix 2, then are forwarded to the Regions for review and verification of data. Quarterly removal accomplishment data are reported in "Quarterly Regional Site-Specific Actual Starts." Based on comments from the Regions, ERD then updates quarterly accomplishment summaries and projections for review by the Director, OERR and finalizes this information for incorporation into SPMS. ERD Regional Coordinators also assist in processing Regional requests for allowance adjustments and coordinating approvals by the Director, OERR and the AA, OSWER.

2. Regional Roles and Responsibilities

The principal responsibility of the Regional offices is to ensure that Headquarters has accurate, timely information on removal activities and costs in order to support program decisions. Regions communicate this information to ERD periodically for each incident through Pollution Reports (POLREPs) and telephone calls. At the end of each quarter, the Regions verify the data distributed by ERD and submit any necessary corrections to ERD.

The Regions must work closely with ERD to finalize reporting data and adjust SCAP removal program targets based on past accomplishments. Based on revised quarterly activity projections, the Regions may modify their resource projections and submit requests for adjustments to their allowances to ERD. Further discussion of the process for establishing and/or adjusting Regional allocations and allowances is provided in Section D below.

D. REGIONAL ALLOCATIONS AND ALLOWANCES

Under current program delegations, Regions have direct responsibility for obligating funds to cover the costs of removal activities. Thus, Regions receive from the EPA Comptroller a portion of Trust Fund money called an "allowance." A Region's annual allowance typically covers the cost of extramural cleanup activities performed under ERCS and other contracts, State Cooperative Agreements (CAs) and Federal interagency agreements. The allowance does not cover the costs for removal support activities such as the Technical Assistance Team, the National Contract Lab Program and the Environmental Response Team. Spending ceilings for these items are managed in Headquarters and are discussed further in Chapter III. Appendix 3, "Removal Program Cost Categories," illustrates which activities the Regional allowance is intended to fund.

To ensure that the annual allowance is sufficient to cover projected removal activities, Headquarters uses the SCAP data to allocate removal program funds among the Regions. Before annual SCAP targets are established, the Regions and Headquarters meet to project removal, remedial and enforcement activity levels and resource needs. A preliminary SCAP is developed and FTEs are determined using a workload model. Regions review their FTE distributions and negotiate any adjustments with the AA, OSWER. The total program budget plan then is approved by the Director, OERR and the AA, OSWER and the annual SCAP targets are finalized.

The Comptroller issues Regional allowances based on the SCAP targets at designated times throughout the fiscal year. In general, the initial removal allowance, issued at the beginning of the fiscal year, is equal to half of the total annual allocation described above. At mid-year, Headquarters reviews each Region's year-to-date obligations, projected expenditures and the current allowance to determine how remaining allowances should be distributed for use in the second half of the fiscal year. Headquarters performs another review at the end of the third quarter before issuing the fourth quarter allowance.

Each Region is responsible for managing its allowance in accordance with applicable financial management procedures such as the "Removal Financial

Management Instructions" (memorandum from AA, OSWER to Regional Administrators, July 31, 1984). Regional financial management responsibilities typically include:

- Approving removal actions and setting project ceilings (up to the delegated limits)
- Obligating funds (up to the delegated limits)
- Submitting obligating documents, e.g., Delivery Orders (DOs), Letter Contracts, Orders for Services, and Notices to Proceed (NTPs) to the Financial Management Division (FMD), Research Triangle Park, North Carolina
- Certifying invoices
- Verifying periodic financial management activity reports generated by the FMD for accuracy
- Reporting major report discrepancies and supplemental information to FMD and to the OERR Funds Control Center (FCC).

Regions also are responsible for initiating requests for any needed adjustments in the allowance.

III. PROGRAM OPERATIONS

The purpose of this chapter is to provide information on removal program statutory requirements as well as EPA policy and procedures for conducting removal actions. Chapter III is divided into eight major sections:

- Criteria for Removals
- Scope of Response
- Procedures for Intiating and Obtaining Approval for CERCLA Removal Actions
- Procedures for Initiating On-Site Activites
- Continuing Removal Projects
- Managing Removal Projects
- Response Reporting
- Closing Out Projects.

A more detailed list of topics covered in Chapter III is provided in the following abbreviated table of contents.

OVERVIEW OF CHAPTER III - PROGRAM OPERATIONS

A. Criteria for Removals
  1. Types of Substances
  2. Types of Threats
  3. Types of Incidents
  4. Potential for Non-Federal Response

B. Scope of Response
  1. Cleanups and Stabilizations
  2. Urgency of Removal Action
  3. Types of Actions
  4. Limits on Removals

C. Procedures for Initiating and Obtaining Approval for CERCLA Removal Actions
  1. Discovery or Notification
  2. Coordination with the Regional Response Teams and the National Response Team
  3. Preliminary Assessment
  4. Other 104(b) Investigations
  5. Responsible Party Search and Negotiation
  6. Determining the Need for and Urgency of a Removal
  7. Removal Activities Affected by the Urgency of the Response
  8. Preparing the Action Memorandum
  9. Regional Approval Authority and Procedures
  10. Headquarters Approval Procedures for Exemptions
  11. U.S. Coast Guard Approval

D. Procedures for Initiating On-Site Activities
  1. Management of Cleanup Services
  2. TAT Special Projects
  3. Use of Interagency Agreements
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E. Continuing Removal Projects
  1. Ceiling Increases
  2. Twelve-Month Exemptions
  3. $2 Million Exemptions
  4. Changes in Scope of Work with No Cost Increase

F. Managing Removal Projects
  1. Oversight of Contractors
  2. Allowable Costs
  3. Cost Management
  4. Access Agreements
  5. Worker and Visitor Health and Site Safety
  6. Community Relations and Public Information
  7. State Role
  8. Roles of Other Federal Agencies at Non-Federal Facilities
  9. Requirements for Recordkeeping

G. Response Reporting
  1. POLREPs
  2. Final OSC Reports

H. Closing Out Projects
  1. Definition of Action Completion
  2. Post Removal Site Control

III. PROGRAM OPERATIONS

The 1985 revisions to the NCP created a single response category of "removal actions" that encompasses the previously separate categories of immediate removals, planned removals and initial remedial measures (IRMs). IRMs have evolved into expedited response actions (ERAs) and are also undertaken under removal authority. A single set of criteria, guidelines and procedures now applies to all these situations. The purpose of this revision was to provide the OSC with more latitude in selecting removal as a response option and, therefore, to expedite stabilization and cleanup. For additional information on ERAs, OSCs should refer to OSWER directive #9360.0-15, "The Role of Expedited Response Actions Under SARA," April 21, 1987.

A. CRITERIA FOR REMOVALS

CERCLA and the NCP define "removal" as the cleanup or removal of released hazardous substances, or pollutants or contaminants which may present an imminent and substantial danger; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the threat of release of hazardous substances; the removal and disposal of material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or the environment. Removals may take place at both NPL and non-NPL sites. The specific situations in which CERCLA-funded removals may occur are guided by the criteria in section 300.65(b)(2) of the NCP.

1. Types of Substances

Removals are relatively short-term actions taken in response to releases of a) hazardous substances or b) pollutants or contaminants that may present an imminent and substantial danger to public health and welfare or the environment pursuant to section 104(a)(1) of CERCLA. Hazardous substances under section 101(14) of CERCLA include the following:

- Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (FWPCA)
- Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA
- Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress)

- Any toxic pollutant listed under section 307(a) of the FWPCA
- Any hazardous air pollutant listed under section 112 of the Clean Air Act
- Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

EPA has promulgated reportable quantities (RQs) for 442 of the 717 hazardous substances (not counting radionuclides) on the CERCLA section 101(14) list (340 RQs were promulgated in 50 FR 13456 on April 4, 1985 and 102 were promulgated in 51 FR 34534 on on September 29, 1986). The remainder of the 273 CERCLA hazardous substances will have RQs promulgated no later than the statutory deadline of April 1988. Additionally, there are no RQ adjustments which will be promulgated by the statutory deadline of April 1988 for 757 radionuclides.

The term "pollutant or contaminant" according to section 101(33) of CERCLA, as amended, includes, but is not limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformation in such organisms or their offspring.

The terms "hazardous substance" and "pollutant or contaminant" do not include petroleum, including crude oil and any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance above. In addition, it does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

2. Types of Threats

CERCLA section 104(a)(1), as amended by SARA, authorizes Fund-financed response actions to any release or substantial threat of release of a hazardous substance and to any release or substantial threat of release of a pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare. This provision, coupled with section 101(23), which provides for removal action in response to any release or threat of release of a hazardous substance that may damage public health, welfare or the environment, demonstrates that removal actions in general are not limited to situations presenting imminent and substantial danger. The imminent and substantial danger limitation for Fund-financed removals applies only to pollutants and contaminants, not to hazardous substances.

The NCP implements CERCLA by allowing OSCs to initiate a removal in response to any release or threat of release that, according to the factors set forth in section 300.65(b)(2), is determined to be a threat to the public health, welfare or the environment. These factors include all those that previously applied to immediate removals, planned removals and initial remedial measures:

- Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations, animals or food chain
- Actual or potential contamination of drinking water supplies or sensitive ecosystems
- Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release
- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate
- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released
- Threat of fire or explosion
- The availability of other appropriate Federal or State response mechanisms to respond to the release
- Other situations or factors that may pose threats to public health, welfare or the environment.

3. Types of Incidents

Authority to undertake removal response is not limited to any particular category of incidents. Historically, CERCLA-funded removal projects have occurred in response to all of the following types of incidents:

- Active Production Facility -- any ongoing operations that manufacture, recycle, handle, store or transport hazardous materials or waste as a primary ingredient, product or by-product of operations or any location contaminated due to off-site migration of hazardous materials or wastes from such operations
- Inactive Production Facility -- any facility no longer in operation that manufactured, recycled, handled, stored or transported hazardous materials or wastes as a primary ingredient, product or by-product of operations or any location contaminated due to off-site migration of hazardous materials or wastes from such previous operations

- Active Waste Management Facility -- any ongoing legal or illegal operation or site whose primary purpose is to handle, exchange, transfer, store, treat or dispose of hazardous materials or wastes or any location contaminated due to off-site migration of hazardous materials or wastes from such a facility or site

- Inactive Waste Management Facility -- any former legal or illegal operation or site whose primary purpose was to handle, exchange, transfer, store, treat or dispose of hazardous materials or wastes or any location contaminated due to off-site migration of hazardous materials or wastes from such a facility or site

- Midnight Dump -- any illegal dumping of hazardous substances or suspected hazardous substances into the air, land, water or other element, whether accidental or deliberate

- Transportation-related -- any release or potential release of hazardous substances due to a transportation situation, accident or malfunction

- Other -- any release of hazardous substances that does not conform to one of the above categories and/or any release where the source of the contaminant is unknown.

The Removal Tracking System (RTS) classifies all removal actions into one of these seven categories of incident types. Examples of each incident type are provided in Appendix 4.

4. Potential for Non-Federal Response

The Agency does not intend to conduct a CERCLA-financed removal where timely action by a potentially responsible party is expected or the response is within the independent financial or technical capabilities of State and local agencies. Thus, after characterizing the threat and ascertaining that it otherwise meets the NCP criteria for a removal, the OSC should examine the alternatives to a CERCLA removal action. Factors to consider are the urgency of the release, the status of enforcement actions, the financial capability of the responsible party and the ability and willingness of State and local agencies to take action.

States and potentially responsible parties are encouraged to participate, to the extent possible, in removal actions. Section F.7 of this chapter and Chapter V discuss in detail the role of States and potentially responsible parties in removal activities.

B. SCOPE OF RESPONSE

The NCP provisions are designed to provide response personnel with greater flexibility in expeditiously addressing threats at both NPL and non-NPL sites. Thus removals can be either cleanups or stabilizations; they can be classic emergencies, time-critical or non-time-critical; and OSCs can undertake a wide range of technical activities under removal authority. The principal limitations on removals are the statutory limitations in section 104(c)(1) of CERCLA, as amended by SARA.

1. Cleanups and Stabilizations

ERD considers that releases are cleaned up when neither the removal nor remedial programs have any further expectation or intention of returning to the site and threats have been mitigated or further actions are unnecessary. Stabilization, by contrast, occurs when removal authority is used to ameliorate immediate health, welfare and environmental threats and further action for longer-term abatement and mitigation of the threats may be necessary.

2. Urgency of Removal Action

Experience has demonstrated that not all actions classified as removals under the NCP will be equally urgent. For example, situations involving fire/explosion or imminent, catastrophic contamination of a reservoir may require more prompt and expeditious attention than certain drum removals or cleanups of surface impoundments. The three categories of removals are defined as follows:

- Classic Emergencies — Those actions where the release requires that on-site activities be initiated within hours of the lead agency's determination that a removal action is appropriate.

- Time-Critical -- Those removals where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a period of less than six months available before on-site activities must be initiated.

- Non-Time-Critical -- Those removals where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of more than six months available before on-site activities must begin. The lead agency will undertake an Engineering Evaluation/Cost Anslysis (EE/CA) for non-time-critical removals.

At the outset of removal actions, OSCs should estimate how urgent the response is (i.e., the maximum time that may elapse between approval of the action and initial response without posing additional significant risks to human health, welfare and the environment). This estimate is essential for determining the extent of responsible party search and negotiation, type and timing of public participation, whether an EE/CA must be conducted, and compliance with other environmental statutes. Sections C.6 and C.7 of this chapter provide further guidance on determining the need for and urgency of a removal.

3. Types of Actions

Section 300.65(c) of the NCP identifies several types of removal activities that may be appropriate for specific situations. This list, which appears below, is not intended to limit response officials from taking other actions deemed necessary in response to a release or to preclude the lead agency from referring response actions to other appropriate Federal or State enforcement authorities.

The following removal actions are listed in section 300.65(c) to be, as a general rule, appropriate in the following situations:

- Fences, warning signs, or other security or site control precautions -- where humans or animals have access to the release
- Drainage controls (e.g., run-off or run-on diversion) -- where precipitation or run-off from other sources (e.g., flooding) may enter the release area from other areas*
- Stabilization of berms, dikes, or impoundments -- where needed to maintain the integrity of the structures
- Capping of contaminated soils or sludges -- where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground water, or air
- Using chemicals and other materials to retard the spread of the release or to mitigate its effects -- where the use of such chemicals will reduce the spread of the release
- Removal of highly contaminated soils from drainage or other areas -- where removal will reduce the spread of contamination
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants -- where it will reduce the likelihood of spillage; leakage; exposure to humans, animals or food chain; or fire or explosion
- Provision of alternative water supply -- where it will reduce the likelihood of exposure of humans or animals to contaminated water.

4. Limits on Removals

CERCLA section 104(c)(1), as amended by SARA, provides that Fund-financed removal actions, other than those authorized by section 104(b), as amended, shall not continue after $2 million has been obligated for the action or twelve months have elapsed from the date of initial response unless the lead agency grants an exemption in accordance with the criteria set forth in section 104(c)(1), as amended. The OSC should make the determination of the need for an exemption at the earliest possible time. Sections E.2 and E.3 of this chapter provide guidance on how to calculate the twelve-month limit, how to track the $2 million limit and how to prepare and process exemption requests.

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* Although not included in the NCP, drainage controls also typically are used to prevent run-off from leaving the release area and/or migrating off-site.

In addition to the limitations on cost and duration, CERCLA section 104(a)(3) provides that a removal action may not be taken in response to a release or threat of release:

- Of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found

- From products which are part of the structure of, and result in exposure within, residential buildings or business or community structures

- Into public or private drinking water supplies due to deterioration of the system through ordinary use.

Section 104(a)(4) of CERCLA, as amended, however, provides that EPA may respond to any release or threat of release if it is determined that it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner. Additional information on responses to naturally occurring substances is provided in Chapter IV.

C. PROCEDURES FOR INITIATING AND OBTAINING APPROVAL FOR CERCLA REMOVAL ACTIONS

This section provides detailed guidelines to response personnel on the procedures for initiating and approving CERCLA removal funding.

1. Discovery or Notification

According to section 300.63 of the NCP, a release may be discovered through the following mechanisms:

- Notification in accordance with sections 103(a) or (c) of CERCLA, as amended by SARA, whereby any person in charge of a vessel or an onshore or offshore facility is required, as soon as he/she has knowledge of any release of a hazardous substance or pollutant or contaminant involving a reportable quantity (RQ), to notify the National Response Center (NRC). EPA has issued a final rule on reportable quantities and notification requirements (50 FR 13456, April 4, 1985 and 51 FR 34534, September 29, 1986).

- Notification under section 304(b) of CERCLA, as amended by SARA, of any release from a facility at which a hazardous chemical or substance, as referred to in section 302(a), is produced, used or stored. The owner or operator of the facility shall immediately notify the local emergency planning committee and the State emergency planning commission.

- Investigation by governmental authorities conducted under section 104(e) of CERCLA, as amended, or other statutory authorities.

- Notification of a release by a Federal or State permittee when required by the permit (e.g., under the CWA, CAA, RCRA, SDWA).

- Inventory efforts or random or incidental observation by government agencies or the public.

- Other sources.

Notification also should be made in accordance with other environmental statutes and regulations including CWA Section 311; RCRA Subtitle C; TSCA section 8(e) and reporting requirements established under the Hazardous Materials Transportation Act (HMTA); the Act to Prevent Pollution From Ships [MARPOL 73/78]; and notification requirements established by the Nuclear Regulatory Commission for reporting releases of certain radioactive substances.

All reports of releases should be made to the NRC. If direct reporting to the NRC is not practicable, reports may be made to the U.S. Coast Guard or EPA. In accordance with CERCLA and the NCP, all Federal agencies are responsible for reporting releases of hazardous substances from facilities or vessels that are under their jurisdiction or control.

Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC. The OSC shall, in turn, notify the governor of the State affected by the release.

If EPA or the USCG is the first to be notified of a release incident, the notified agency should document the release incident data and relay the data to the appropriate OSC for review and response determination. In the event EPA is the notified agency, the release data should be transferred within two weeks of receipt to the Transportation Systems Center (TSC) for compilation and input into the Emergency Response Notification System (ERNS) (for additional information regarding ERNS, see Chapter II, Section A.1). The time frame for the USCG to relay release notification data to the NRC has yet to be determined.

Upon discovery or notification of release, the OSC should determine whether the release may require a removal action pursuant to section 300.65(b) of the NCP. If a release meets the NCP criteria, the OSC should conduct a preliminary assessment as described in Section C.3 below. Otherwise, the OSC should refer the case to either 1) remedial response staff to conduct a site evaluation pursuant to section 300.66 of the NCP, or 2) another appropriate Federal authority or the State.

2. Coordination with the Regional Response Teams and the National Response Team

The Regional Response Team (RRT) and National Response Team (NRT) provide important technical, coordination and communication resources to the OSC in developing Regional emergency preparedness and in responding to specific releases.

a. Regional Response Teams

The role of RRTs is to coordinate Region-wide emergency preparedness and planning and to provide technical advice and coordination to support the OSC. Specific functions the RRTs can perform under section 300.34(f)(4) of the NCP include:

- Monitoring and evaluating reports from the OSC, advising on the extent and duration of response, and recommending specific response actions
- Requesting response resources from other Federal, State or local governments or private agencies
- Assisting the OSC in preparing public information releases and in communicating with the NRT
- Recommending replacement of the OSC, if necessary
- Submitting POLREPs to the NRT.

Pursuant to section 300.34(f), the RRT may be activated by the chairman as an incident-specific response team when a discharge or release:

- Exceeds the response capability available to the OSC in the place where it occurs
- Transects regional boundaries
- May pose a substantial threat to the public health, welfare or to the environment, or to regionally significant amounts of property. Regional contingency plans shall specify detailed criteria for activation of RRTs.

The RRT may be activated during any pollution emergency by a request from the OSC or from any RRT representative to the chairman of the team. Requests for RRT activation shall later be confirmed in writing. During prolonged removal action, the RRT may not need to be activated or may need to be activated only in a limited sense, or have available only those members who are directly affected or can provide direct response assistance. When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives in the RRT have the same status as any Federal member of the RRT. The RRT can be deactivated when the incident-specific RRT chairman determines that the OSC no longer requires RRT assistance. More detail concerning the RRT can be found in sections 300.32 and 300.34 of the NCP and Chapter I.C of this manual.

b. National Response Team

National planning and coordination is accomplished through the standing meetings of the National Response Team, which consists of representatives of the Federal agencies designated in section 1(a)(2) of E.O. 12580. Other agencies may request membership through the chairman of the NRT.

The NRT should be activated as an emergency response team if requested by any NRT member or when an oil discharge or hazardous substance release:

- Exceeds the response capability of the Region in which it occurs
- Transects regional boundaries
- Involves significant population threat or national policy issues, substantial amounts of property, or substantial threats to natural resources.

When activated for a response action, the NRT may perform the following functions:

- Monitoring/evaluating reports from the OSC and recommending, through the RRTs, specific response actions
- Requesting resources from other governmental or private agencies
- Coordinating the supply of equipment, personnel or technical advice.

More detailed information concerning the NRT can be found in sections 300.32 (Planning and Coordination) and 300.34 (Special Forces and Teams) of the NCP and in Chapter I.C of this manual.

3. Preliminary Assessment

Section 300.64 of the NCP requires that a preliminary assessment of a release or threat of a release identified for possible removal action shall, as appropriate, be undertaken by the lead agency as promptly as possible. For EPA-lead removals, the OSC has responsibility for conducting this assessment. Depending upon the characteristics of the release and urgency of the situation, the preliminary assessment may take only an hour or two or as long as several weeks. The OSC shall, as appropriate, base the assessment on readily available information. In general, the preliminary assessment for extremely urgent situations (e.g., classic emergencies) will rely primarily on existing information and perhaps a few new samples. When the characteristics of the incident allow for longer analysis and evaluation, the preliminary assessment may include a more extensive sampling and monitoring effort.

The assessment may include but is not limited to:

- Identification of the source and nature of the release or threat of release
- Evaluation of the threat to public health by the Department of Health and Human Services' (HHS) ATSDR or other sources (e.g., State public health agencies)
- Evaluation of the magnitude of the potential threat
- Evaluation of factors necessary to make the determination of whether a removal is necessary
- Determination if a non-Federal party is undertaking proper response.

In addition to the above information, the OSC must incorporate any special procedures or technical criteria EPA has established for a variety of special, complex cases. These cases include evacuation and relocation, contamination of drinking water, structures and private residences, floodplains and wetlands, Native American lands, and contamination anywhere due to radioactive wastes and naturally occurring substances. Chapter IV describes both the special evaluations OSCs must complete and the necessary coordination and consultation with other governmental agencies.

The OSC may undertake a variety of activities to collect the necessary information. For example, a preliminary assessment at a hazardous waste management facility may include the review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches and personal interviews. In addition, the OSC may conduct a perimeter (off-site) inspection and, where needed, a site visit if conditions are such that it can be performed safely. Moreover, OSCs may conduct studies or investigations as part of the preliminary assessment under CERCLA section 104(b), as amended. Additional information on 104(b) activities is provided in Section C.4 of this chapter.

Section 300.64(c) of the NCP provides that a preliminary assessment shall, as appropriate, be terminated when the OSC or lead agency determines: 1) there is no release or threat of release; 2) the source is neither a vessel nor a facility; 3) the release does not involve a hazardous substance or a pollutant or contaminant that may pose an imminent and substantial danger to public health or welfare; 4) the amount, quantity and concentration released does not warrant Federal response; 5) a party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required or 6) the assessment is completed.

At the conclusion of the preliminary assessment, the OSC must make the following determinations and take appropriate action. If the OSC determines that natural resources have been or are likely to be damaged, the OSC should ensure that the trustees of the affected natural resources are notified in order that they may initiate appropriate actions pursuant to section 300.74(b) of the NCP. If remedial actions under section 300.68 are indicated, the OSC should refer the incident, together with all information from the preliminary assessment, to remedial response personnel for a site evaluation pursuant to section 300.66. OSCs are encouraged to submit to ERD POLREPs documenting situations where preliminary assessments were initiated, but determinations were made not to conduct a removal action.

During the preliminary assessment, the OSC is also responsible for conducting a potentially responsible party search to identify and compel legally responsible parties to take corrective action. See Chapters III.C.5 and V of this document for a detailed discussion of potentially responsible party search, notification and response.

It is important to document the determinations made during pre-removal, preliminary assessment activities. This documentaton, along with any preliminary assessment data, will be included in the Administrative Record. See Section F.6.b of this chapter for additional information on Administrative Record requirements.

4. Other 104(b) Investigations

Section 104(b) of CERCLA provides for planning, legal, fiscal, economic, engineering, architectural and other studies or investigations that may be necessary to plan and direct response actions. CERCLA section 104(c)(1), as amended, exempts these costs and the time spent implementing the activities from the twelve-month/$2 million statutory limitations.

As noted previously, studies or investigations under 104(b) may be appropriately conducted as part of the preliminary assessment of an observed or suspected hazardous substance release where an OSC requires more information to determine the need for, extent of or best method to conduct a removal. Where such studies are necessary, the OSC shall use, to the extent possible, the in-house capability of the ERT, the TAT, the Field Investigation Team (FIT) and NCLP. Chapter I.C summarizes the services they provide. To arrange for TAT assistance, the OSC should contact the TAT Regional Deputy Project Officer (DPO) who is responsible for preparing and issuing a written work order, called a Technical Direction Document (TDD), to the TAT contractor. When time-critical response is required, the DPO may issue a verbal order to initiate TAT assistance followed within five working days by the TDD, which contains the scope of work, a schedule of deliverables, and budget and reporting requirements. Information required for preparing a TDD is specified in the TAT Contract Users' Manual. When FIT assistance is required, the OSC should contact the REM/FIT Regional Project Officer to arrange for FIT involvement and issuance of the written work order.

The ERT maintains a 24-hour response capability consisting of support personnel specializing in all aspects of environmental emergencies. When an OSC determines that ERT assistance is necessary, he/she should contact the Director, Emergency Response Division (202-475-8720) during duty hours or, during non-duty hours, the ERT duty officer at the 24-hour response number (201-321-6660 or FTS 340-6660). The authority to activate the ERT rests with the Director, ERD, or his or her designee. Upon activation, appropriate ERT personnel and resources are dispatched to operate under the direct operational control of the OSC.

The National Contract Laboratory Program (NCLP) provides a national system of contract laboratories to augment EPA in-house laboratory analytical support for response actions. The OSC can access the NCLP through the Regional Sample Control Center official designated by each Regional Office. Chapter I contains additional information on obtaining analytical support from both EPA's Regional Environmental Services Divisions and the NCLP.

Where appropriate, the OSC may request the services of other Federal agencies. For example, limited health assessments may be performed by the Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (ATSDR). Section F.8 of this chapter describes the roles and responsibilities of other Federal agencies at non-Federal facilities, as well as the procedures for obtaining their assistance.

5. Responsible Party Search and Negotiation

Section 300.65(a)(2) of the NCP requires the lead agency, to the extent practicable, to search for responsible parties and attempt to have them perform the necessary removal action. In order to secure a potentially responsible party response, EPA policy requires the OSC, the Regional enforcement staff or the Regional Counsel to attempt to contact orally potentially responsible parties (PRPs) in situations where site response is required within one week (see Appendix 18, "Issuance of Administrative Orders for Immediate Removal Actions"). This initial contact should be followed up with a written request. In addition, the Agency will pursue all opportunities to recover costs it has incurred.

Before seeking CERCLA funding, the OSC should, with assistance from Regional Counsel, make a reasonable effort to identify and compel legally responsible parties to undertake necessary response actions. The level of effort determined to be reasonable will depend upon the immediacy and seriousness of the release situation; however, efforts to identify responsible parties must include, at a minimum, oral inquiries of reasonably available sources who may be knowledgeable of the situation. If a potentially responsible party is initially known or later identified, the OSC must request that the party respond, and inform him/her of the Federal interest and potential liability he/she may incur if it is determined that he/she is a responsible party and he/she fails to respond or responds improperly. If criminal activity is suspected, the OSC should inform Regional enforcement personnel and the National Enforcement Investigations Center (NEIC) should be contacted. More detailed information concerning responsible party search and negotiation can be found in Chapter V.

6. Determining the Need for and Urgency of a Removal

Section 300.65(a) of the NCP provides that in determining the appropriate extent of action at a release, the OSC shall:

- First, review the preliminary assessment and current site conditions to determine if removal action is appropriate
- Where responsible parties are known, make an effort initially, to the extent practicable considering the exigencies of the circumstances, to have them perform the necessary removal actions
- Where responsible parties are unknown, make an initial effort, to the extent practicable considering the exigencies of the circumstances, to locate them and have them perform the necessary removal action.

At any release, regardless of whether the site is on the NPL, where the OSC determines that there is a threat to public health, welfare or the environment, based on the factors in section 300.65(b)(2), the OSC may take any appropriate action to abate, minimize, stabilize, mitigate or eliminate the actual or potential release and the resulting threat.

A decision to undertake a CERCLA-financed removal must be defensible in Federal government proceedings for cost recovery and must be able to withstand internal and external scrutiny (e.g., investigations by the Inspector General or the General Accounting Office). Thus, response personnel must maintain a written record demonstrating that their decision to undertake a removal and selection of removal activities are consistent with CERCLA, as amended, the NCP and program delegations, policies and procedures.

The principal document for demonstrating the need for and scope of a CERCLA-financed removal is the removal Action Memorandum. To assist OSCs in preparing thorough, complete Action Memoranda, ERD has developed a "decision rationale" summarized below and presented in Appendix 5.

This decision rationale consists of a series of questions/topics to be addressed in the Action Memorandum and designed to aid the OSC in identifying data needs and analyzing information collected during the preliminary assessment. The questions incorporate key provisions of the NCP and requirements from policies on off-site disposal, environmental compliance, wetlands/floodplains and other special circumstances described in detail in Chapter IV.

Because procedures for initiating and conducting CERCLA response may vary somewhat according to the urgency of the situation, the decision rationale is organized into two sections: a screen for classic emergencies and a more detailed evaluation applicable to time-critical and non-time-critical incidents. This distinction recognizes that in classic emergency situations, response personnel may need to base their decisions on relatively limited data, while less urgent incidents allow for more extensive environmental monitoring and sampling and a longer planning horizon. The classic emergency screen enables the OSC to ascertain how quickly response must begin and the consequences of no response or a delay in response. Topics covered include incident characteristics (e.g., type of release, extent of release), materials (e.g., types, amounts), and timing of response. The questions/topics presented in the classic emergency screen apply to all removals. The questions/topics in the detailed evaluation are in addition to those in the classic emergency screen.

If the OSC determines that the incident is not a classic emergency, the OSC should conduct a more extensive data collection and analysis effort to document more completely the actual or potential health and environmental threat. For example, the OSC should make a concerted effort to use existing environmental and health standards as triggers for initiating response and as guidelines in determining response actions (NOTE: OERR is currently developing guidance on compliance with "applicable or relevant and appropriate requirements"). OSCs should also document that the time frame for response is more appropriate for removal than remedial response. Additionally, OSCs should ensure that a more detailed PRP search, notification and negotiation is conducted.

7. Removal Activities Affected by the Urgency of the Response

As noted earlier, situations eligible for consideration for removal actions will not be of equal urgency and thus the procedures for initiating and conducting a CERCLA response may vary, depending upon the exigencies of the situation. For example, classic emergencies and some time-critical incidents may require OSCs to adapt streamlined procedures for initiating response activities, such as conducting limited preliminary assessments and PRP search activities. An OSC's decision on the urgency of an incident will influence the following removal procedures and activities:

- Activation of OSC's $50,000 authority -- If delegated, OSCs may use their authority only at classic emergencies from transportation accidents, active or operating facilities, or deliberate dumps or when there is a risk of death, injury, or catastrophic environmental damage from releases at inactive/abandoned facilities or sites (more detailed information on classic emergencies and activating the OSC's $50,000 authority can be found in Section C.9 of this chapter).

- Extent of PRP search/notification -- If start-up of on-site work is required within one week from the determination of the need for a removal, OSCs may proceed without issuing notice letters to potentially responsible parties, although they should attempt verbal notification.

- Off-site disposal -- OSWER's "Off-site Policy," described in Chapter IV, establishes stringent technical and procedural requirements for off-site disposal from all Superfund responses.

- Compliance with environmental statutes -- In accordance with OERR's "Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements" (July 9, 1987), EPA's policy is to pursue removal actions that will meet applicable or relevant and appropriate requirements (ARARs) of other Federal and State environmental and public health laws to the maximum extent practicable, considering the exigencies of the situation. Section 121(e) of CERCLA, as amended, exempts response actions conducted entirely on site from Federal, State or local permit requirements. The Interim Guidance also states that actions conducted entirely on site need only comply with the substantive aspects of ARARs and not with the administrative aspects, such as obtaining permits.

8. Preparing the Action Memorandum

An Action Memorandum must be prepared and approved for all removals conducted by EPA or USCG. Because there are several different scenarios that necessitate the initiation of a Fund-financed response, each Action Memorandum must be tailored to the specific incident and submitted to the appropriate authority in the Region or Headquarters for approval. It is important that Action Memoranda are sufficiently detailed to support the need for and extent of removal activities because Action Memoranda will be included in the Administrative Record. In addition, Action Memoranda may serve as supporting documentation in the event of cost recovery actions, challenges to the selection of response actions or claims for reimbursement under CERCLA §106(b).

The purpose of this section is to describe the elements which all Action Memoranda must contain, explain the steps for estimating the project ceiling and discuss the process for determining the proper approval authority for initiating and continuing removal actions. This section discusses preparation of initial Action Memoranda. If during the course of a removal action, the OSC determines that response activities will extend beyond the originally anticipated cost ceiling or time frame or requires a change in the scope of work, the Action Memorandum needs to be amended to address these changes. Additional information concerning ceiling increases and exemptions with respect to Action Memoranda is contained in Section E.

a. Documenting the Need for a Removal Action

Once it has been determined from the results of the preliminary assessment that a removal action should be initiated, the OSC must document that the release meets the criteria in section 300.65 of the NCP. The principal document for demonstrating the need for and scope of a Fund-financed removal is the Action Memorandum. At a minimum, the Action Memorandum must cover all of the topics listed below to demonstrate that the incident meets the criteria of section 300.65 of the NCP and that all actions in the scope of work are consistent with both CERCLA, as amended by SARA, and the NCP:

- Site background
- Threat to the public health and welfare or the environment
- Enforcement actions/plans
- Proposed actions and costs
- Expected change in the situation should no action be taken or should action be delayed
- Important policy issues
- OSC recommendations.

A recommended format for OSCs to follow in preparing their removal Action Memoranda under various scenarios, which include detailed descriptions of these and other topics (e.g., demonstrating that the proposed action contributes to the efficiency of any long-term remedial action), is provided in Appendices 6, 7, 9, 10, 12 and 13.

b. Determining the Project Ceiling

In order for the Regions to manage their allowances for removal activities effectively, OSCs must estimate, to the extent practicable, all response costs and document the estimated total project ceiling in the Action Memorandum. By estimating the total costs prior to initiation of response actions, OSCs will be able to determine if the removal action will exceed the $2 million limitation and request the necessary exemption in the initial Action Memorandum (see Appendix 7).

Methods for estimating project costs include reviewing historic case files and referencing lists of standard equipment and labor rates. Historic case files of similar removal actions can be used to determine the types of equipment/materials and related costs that may be required for a removal. In addition to historic files, some Regions maintain lists of standard unit prices for equipment and materials and labor rates for required personnel.

c. Approval Authority

In order to expedite the approval process, it is important that the OSC prepare the Action Memorandum in a timely manner for approval by the proper authority. Exhibit III-1 depicts the process for determining the type of Action Memorandum that must be prepared under varying circumstances and the appropriate approval authority.

A summary of approval authorities for CERCLA-funded removal actions is as follows:

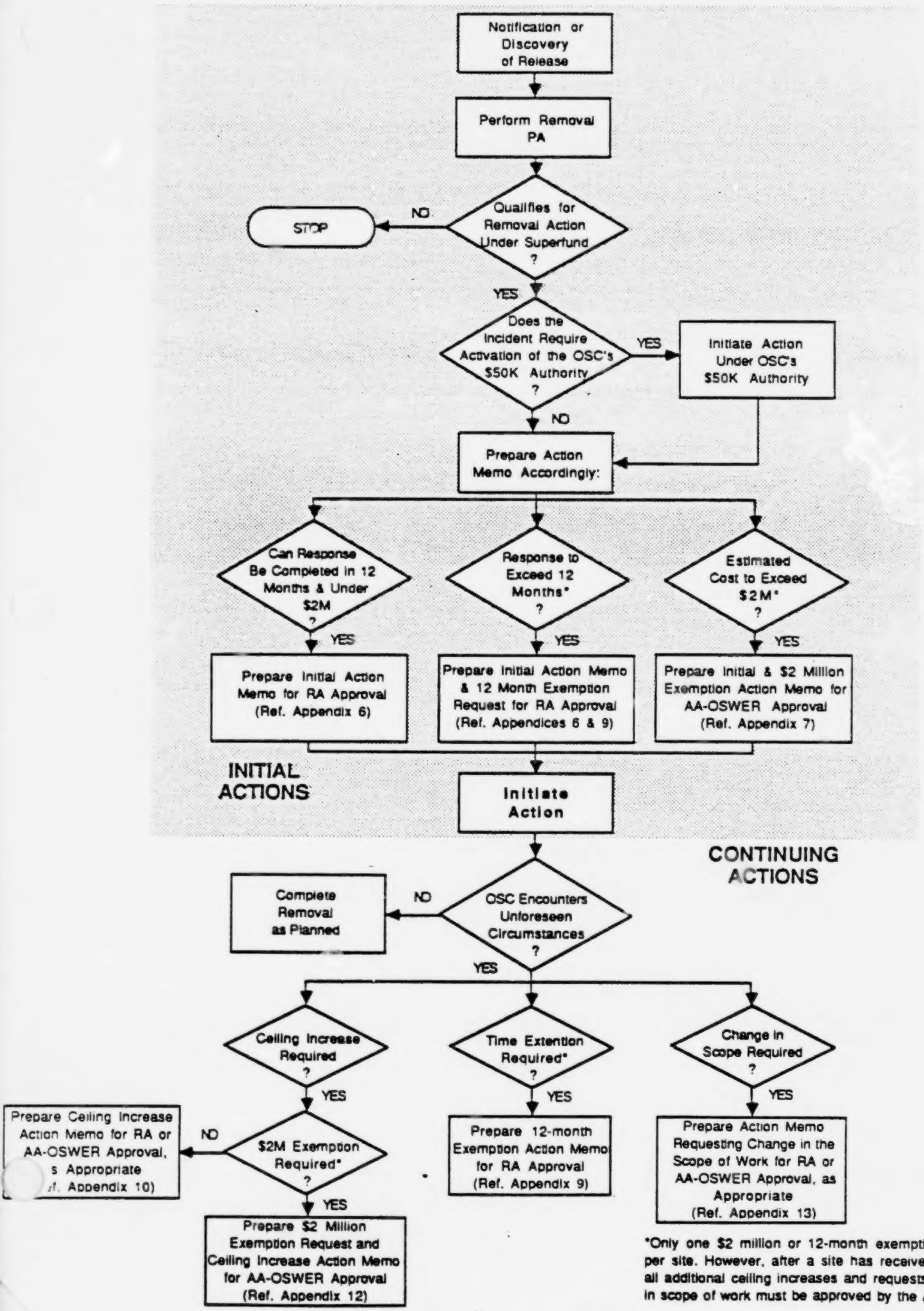
- Regional Administrators (RAs) have the authority to approve the initial Action Memorandum in the following situations:
  - Initial actions are expected to last less than twelve months at a cost of up to $2 million
  - Initial actions are expected to last longer than twelve months at a cost of up to $2 million
  - Restart actions if proposed actions will not raise the project ceiling above $2 million.
- AA, OSWER approval is required for:
  - Initial actions estimated to cost more than $2 million
  - Restart actions if the proposed actions will raise the total project ceiling above $2 million
  - A ceiling increase to continue ongoing actions if the increase will raise the total project ceiling above $2 million.

Moreover, in accordance with Delegation 14-1-A, concurrence by the AA, OSWER is required for precedent-setting or nationally significant actions at non-NPL sites.

Generally, the Action Memorandum is prepared prior to initiating response activities. In extreme emergencies, however, the OSC may initiate activities under his or her $50,000 authority without preparing in advance the necessary documentation. However, in these circumstances, OSCs must document their decision within 24 hours of initiating response (see Section C.9 of this chapter for a discussion of the OSC's $50,000 authority and documentation requirements).

The OSC must estimate the duration and cost of the removal actions in order to determine the proper approval authority. If the anticipated costs are less than $2 million and the removal can be performed in less than twelve months, the OSC should prepare an initial Action Memorandum for RA approval following the model format presented in Appendix 6. For removal actions anticipated to continue beyond twelve months at a cost less than $2 million the OSC should prepare an initial Action Memorandum (Appendix 6) accompanied by a request for exemption to the twelve-month limit (Appendix 9) for RA approval. Initial or ongoing removal actions exceeding $2 million must be approved by the AA, OSWER. If the estimated project ceiling is more than $2 million, the OSC should

EXHIBIT III-1
ACTION MEMORANDUM APPROVAL PROCEDURES


Notification or Discovery of Release
Perform Removal PA
Qualifies for Removal Action Under Superfund ?
NO
STOP
YES
Does the Incident Require Activation of the OSC's $50K Authority ?
YES
Initiate Action Under OSC's $50K Authority
NO
Prepare Action Memo Accordingly:
Can Response Be Completed in 12 Months & Under $2M ?
Response to Exceed 12 Months* ?
Estimated Cost to Exceed $2M* ?
YES
YES
YES
Prepare Initial Action Memo for RA Approval (Ref. Appendix 6)
Prepare Initial Action Memo & 12 Month Exemption Request for RA Approval (Ref. Appendices 6 & 9)
Prepare Initial & $2 Million Exemption Action Memo for AA-OSWER Approval (Ref. Appendix 7)
INITIAL ACTIONS
Initiate Action
CONTINUING ACTIONS
OSC Encounters Unforeseen Circumstances ?
NO
Complete Removal as Planned
YES
Ceiling Increase Required ?
Time Extention Required* ?
Change in Scope Required ?
YES
YES
YES
$2M Exemption Required* ?
NO
Prepare Ceiling Increase Action Memo for RA or AA-OSWER Approval, s Appropriate f. Appendix 10)
YES
Prepare $2 Million Exemption Request and Ceiling Increase Action Memo for AA-OSWER Approval (Ref. Appendix 12)
Prepare 12-month Exemption Action Memo for RA Approval (Ref. Appendix 9)
Prepare Action Memo Requesting Change in the Scope of Work for RA or AA-OSWER Approval, as Appropriate (Ref. Appendix 13)

*Only one $2 million or 12-month exemption is required per site. However, after a site has received an exemption, all additional ceiling increases and requests for a change in scope of work must be approved by the AA-OSWER.

prepare the initial Action Memorandum and request for a $2 million exemption for AA, OSWER approval following the format provided in Appendix 7.

If it is determined after the initiation of approved removal actions that additional funds, a time extension or a change in the scope of the response is required, an Action Memorandum must be prepared and approved to continue site activities. Information on continuing removal actions is contained in Section E of this chapter.

9. Regional Approval Authority and Procedures

In accordance with Delegation 14-1-A, signed on February 26, 1987 (Appendix 8), RAs may approve removal actions costing up to $2 million at NPL sites or non-NPL sites and may grant exemptions to the twelve-month statutory limit. In addition, under Delegation 14-1-A, RAs may redelegate to the OSCs the authority to approve actions costing up to $50,000 in emergency situations where an expeditious response is required. This Section provides guidance for activating the OSC's $50,000 approval authority and obtaining RA approval.

a. Activation of the OSC's $50,000 Authority

RAs may redelegate to OSCs the authority to approve actions costing up to $50,000 at 1) classic emergencies from transportation accidents, active or operating facilities, or deliberate dumps; or 2) when there is a risk of death, injury or catastrophic environmental damage from hazardous substance releases at inactive or abandoned facilities or sites, including imminent or actual events such as fire and explosion; release of acutely toxic liquids or vapors or acute contamination of a water supply at the tap in a matter of hours or days.

The OSC's $50,000 authority is included in the RA's $2 million authority; it is not in addition to that authority. The $50,000 authority can be used to initiate response and can be used more than once at a site for project restarts due to new life-threatening events, even if that restart would exceed the twelve-month limit, but not for continuations of work in progress (NOTE: OSCs must document in subsequent Action Memoranda that the situation meets the criteria for an exemption to the twelve-month limit). Additionally, the OSC's $50,000 authority may not be used for a restart that would cause total removal costs to exceed the RA's $2 million approval authority, unless a ceiling increase and exemption are obtained from HQ; nor may it be used past the $1.6 million checkpoint (described in Section E of this chapter) unless an HQ exemption to the $2 million limit is obtained. In emergency circumstances where the OSC's authority is used for a restart that would exceed the RA's $2 million authority or the $1.6 million checkpoint, verbal approval may be obtained from HQ, but it must be followed within 24 hours by an exemption and ceiling increase request containing the information shown in Appendix 12. For additional information on costs that count toward the $2 million limit, see Section E.2 of this chapter.

Within 24 hours of initiating action under the OSC's $50,000 authority, the OSC must document the decision in a memorandum to the appropriate Regional official. This memorandum should contain the information in the model shown in Appendix 6. The OSC's authority allows for expeditious response, even if the action is known from the outset to require more than twelve months. In such cases, the OSC must promptly request an exemption to the twelve-month limit. This request should contain the information in the model shown in Appendix 9 and should be forwarded through the Regional concurrence chain.

b. Regional Authority

As described above, RAs may approve removal actions costing up to $2 million at NPL or non-NPL sites that are expected to 1) last up to twelve months, or 2) expected from the outset of the project to last longer than twelve months, or 3) originally expected to last up to twelve months but later are determined to require continuation. Thus, in addition to the "up to $2 million approval authority," this delegation also gives RAs the authority to grant exemptions to the twelve-month limit. RAs may redelegate their authority as provided in Delegation 14-1-A to approve expenditures up to $2 million for projects lasting up to twelve months to their Division Directors. RAs may also redelegate to OSCs the authority to approve actions costing up to $50,000 as described in Section C.9.a of this chapter. Discussion of allowable costs applicable to the RA's $2 million authority are discussed in Section E of this chapter.

All Regional approvals of initiation and continuation of removal actions must be properly documented. Approvals to initial removal actions must demonstrate that the release meets the criteria of section 300.65 of the NCP. Section C.9.c of this chapter describes procedures for Regional approval of removals. Exemptions from the twelve-month limit must demonstrate that continued actions beyond twelve months meet the criteria of section 104(c)(1) of CERCLA, as amended. Procedures for twelve-month exemptions are in Section E.2 of this Chapter.

c. RA Approval Procedures

The OSC is responsible for documenting that the release meets the criteria in section 300.65 of the NCP in an Action Memorandum (as described in Section C.8 of this chapter) and forwarding the memorandum through the Regional concurrence chain. The Region then must submit a copy of the signed Action Memorandum to ERD within five days of the initiation of an RA-approved response activity. This submission may be made by telefax (#202-755-2155) or by overnight Regional pouch mail. The Region should also notify the Response Operations Branch by phone (#8-382-2188), by TWX (#710-822-9269) or by E-Mail as soon as possible when the removal has been approved in the Region. Removal actions initially or ultimately costing more than $2 million require the approval of the AA, OSWER in accordance with Delegations 14-2-A and 14-2-B, described in Section C.10 of this chapter and presented in Appendix 11.

At Headquarters, Regional Coordinators in ERD's Response Operations Branch are available to discuss and provide assistance with a potential removal. During regular working hours, OSCs can contact the appropriate Regional Coordinator at 8-382-2188. These Coordinators are available to assist in the preparation of removal requests either in Regional Offices or on site. For assistance with emergencies that arise during non-duty hours, OSCs should contact the ERD Duty Officer through the NRC.

It is crucial to coordinate all requests through Regional enforcement personnel to avoid unnecessary processing where responsible party response could be obtained. In addition, the Regional enforcement office will be consulted to ensure that notice letters, if appropriate, have been sent to all known responsible parties and that no known responsible parties will take over cleanup. See Chapter V of this document for more information on this subject.

10. Headquarters Approval Procedures for Exemptions

Response actions for cleanups initially or ultimately determined to require over $2 million in obligations require approval from the AA, OSWER. This is in accordance with Delegations 14-2-A and 14-2-B, signed by the Administrator February 26, 1987 (Appendix 11). The OSC should contact his or her designated Regional Coordinator as soon as possible to alert ERD that an Action Memorandum is being sent. Advance notice of a request is important since the Regional Coordinator must send the Action Memorandum through several additional offices for concurrence before the request can be approved. Those actions not anticipated to exceed $2 million are subject only to Regional approval procedures and do not require that the OSC follow the Headquarters approval procedures outlined below. However, in accordance with Delegation 14-1-A (Appendix 8), concurrence by the AA, OSWER is required for precedent-setting or nationally significant actions at non-NPL sites.

OSCs are encouraged to submit to their designated Regional Coordinator draft Action Memoranda to ensure that all requests requiring HQ approval are complete. In addition, OSCs should send all final Action Memoranda requiring HQ approval to their designated Regional Coordinator who will immediately begin the concurrence process. The procedures for obtaining AA, OSWER approval during regular working hours are as follows:

- The OSC shall notify the appropriate Regional Coordinator in the Response Operations Branch, ERD of the Region's intent to request HQ approval to initiate a removal. (Phone # 8-382-2188, Magnafax # 202-755-2155, TWX # 710-822-9269, E-Mail).

- The OSC shall then provide the information set forth in the model Action Memorandum in Appendix 7 or 12, depending on whether the action is new or ongoing, respectively. The request must be signed by the RA, and be addressed to the AA, OSWER through the Director, OERR to the attention of the Director, ERD.

- The Response Operations Branch, ERD will review the Action Memorandum, coordinate and obtain concurrences from other divisions and offices as necessary (e.g., the Office of Waste Programs Enforcement, Office of General Counsel (OGC) and Hazardous Site Control Division), and relay the request and a recommendation for approval/denial to the Director, OERR. The Director, OERR will review the request and forward it with his or her recommendation to the AA, OSWER for final approval.

- ERD will then communicate the OSWER decision back to the OSC as quickly as possible. Written confirmation of the decision will be forwarded to the OSC by ERD as soon as practicable.

- In an emergency, the initial request or request to exceed $2 million may be made verbally. Within 24 hours, the OSC shall provide the information set forth in the model Action Memorandum format in Appendix 7. The request must be signed by the RA.

For emergencies during non-duty hours (after 5 p.m. EST on weekdays and on Saturday, Sunday and holidays), the following approval sequence will be used:

- The OSC will telephone the National Response Center, 800-424-8802, identify himself/herself, and ask to be put in contact with the EPA ERD duty officer

- The NRC will contact the EPA ERD duty officer

- The ERD duty officer will contact the OSC and ask for the information listed in Appendix 7, and notify the supervisory duty officer; the Director, OERR; and the Assistant Administrator, OSWER who will approve or deny the request

- The ERD duty officer will communicate the decision to the OSC as quickly as possible and will confirm the decision in writing by the end of the next work day

- The formal request from the RA, in Action Memorandum format, shall be sent to ERD within 24 hours or on the next work day.

All accounting information (i.e., the site/spill identification number, the account number using the new site/spill ID, the Document Control Number and object class) should be obtained from the Regional financial management office in accordance with established procedures. For Coast Guard actions and HQ-approved responses, the Funds Control Center (FCC) at EPA HQ assigns all accounting numbers, Document Control Numbers (DCNs) and site/spill IDs.

11. U.S. Coast Guard Approval

Under a Memorandum of Understanding (MOU) between USCG and EPA (as summarized in Appendix 14), the USCG may obligate up to $250,000 per incident without prior approval from EPA. Planned revisions to a new MOU, however, will raise this limit to $2 million per incident. Total costs included in the current $250,000 limit are:

- Commercial cleanup contracts
- Analytical services
- Other Federal agency costs (e.g., National Institute of Occupational Safety and Health, Federal Emergency Management Agency)
- USCG out-of-pocket expenses.

In addition, the USCG may request permission to obligate amounts in excess of the $250,000 limit by submitting an Action Memorandum to the AA, OSWER through the Response Operations Branch, ERD. The USCG is also authorized to grant twelve-month exemptions for USCG-lead CERCLA responses where the response meets the statutory criteria of CERCLA 104(c)(1), as amended by SARA. Further detail is provided in Section D.3.a of this Chapter.

When initiating a removal action, the USCG shall submit POLREPs to the Director, ERD (POLREPs are discussed in Section G.1 of this chapter). An initial POLREP shall be submitted within 72 hours of initiating a CERCLA response. Progress POLREPs should be submitted on a routine basis. Special POLREPs shall be submitted to report any major unanticipated event at approved response actions (e.g., fires, explosions and all accidents). Within 60 days of the conclusion of a response, the USCG OSC shall submit to EPA HQ (via USCG HQ) a Final OSC Report in accordance with the format detailed in section 300.40 of the NCP.

D. PROCEDURES FOR INITIATING ON-SITE ACTIVITIES

CERCLA limits removals to twelve months, except in the circumstances outlined in III.E.2. To ensure that as much of this limited time period as possible is available for and devoted to cleanup activities, investigating and planning activities are not included in the time limitations for cleanup activities. The Agency has defined the start of the twelve-month limit to be the date on which on-site cleanup activities commence. This corresponds to the date on which a cleanup contractor mobilizes at the site, not the date on which the action is approved or the first obligation occurs.

To minimize the possibility of lengthy disruptions to the response once the twelve-month "clock" has started, OSCs are encouraged to anticipate and obtain as much of the expertise, technical personnel and equipment prior to the start date of the removal as practicable. Mechanisms available to the OSC include:

- Procurement of cleanup services
- Technical Assistance Team
- Use of interagency agreements
- Superfund State Contracts (SSCs) and Cooperative Agreements.

Each of these mechanisms is described below.

1. Management of Cleanup Services

OSCs have available a variety of procurement mechanisms that will allow flexible and expeditious yet cost effective response. These mechanisms are:

- Emergency Response Cleanup Services Contracts are previously awarded competitive contracts providing expeditious response (i.e., within hours or days). OSCs should use ERCS for removal situations at NPL and non-NPL sites requiring rapid response. Examples are drum removal and lagoon drawdowns.

- Remedial planning contracts (REM/FIT, Zones I and II; REM II, REM III and REM IV) are cost-plus-award-fee contracts. They may be appropriate for leading non-time-critical removals where urgency is not a factor and where there is sufficient lead time. Any site construction (e.g., installing water lines to provide household water to affected communities) may be performed by a subcontractor under a fixed price contract.

- Letter contracts with States, local governments and commercial contractors are non-competitive. Under the Competition in Contracting Act, which became effective April 1, 1985, EPA must significantly limit the use of sole-source, noncompetitive contracting. Agency policy at the present time is to prohibit letter contracts with States, local governments and commercial contractors unless the required work is so urgent that ERCS contractor response times are not sufficient.

- Other commercial contracts such as Notice to Proceed and Order for Services also face significant limitations under the Competition in Contracting Act. Specifically, these contracts are awarded only when the ERCS contractor cannot respond in time and are in effect only until the ERCS contractor is able to respond. These commercial contracts are further described in Section D.1.c of this chapter.

Procedures for and limitations on the use of each mechanism are summarized below.

a. ERCS Contracts

The ERCS contract system presently consists of four zone contractors providing expedited response coverage for EPA Regions:

- Zone 1 - Regions 1-3
- Zone 2 - Region 4
- Zone 3 - Region 5
- Zone 4 - Regions 6-10.

These zone contractors are able to provide a full range of response services including: containment and countermeasures; cleanup, mitigation and disposal; restoration and analytical services (e.g., sampling and analytical support). In addition to the four current zone contractors, there are procurements underway for several ERCS Regional contractors who will provide similar services but have smaller resource capacities and cover more localized geographical areas. Like the zone contracts, the ERCS Regional contracts are indefinite quantity, fixed rate delivery order contracts. Additional information detailing the capabilities of the zone and Regional contractors is in the Emergency Response Cleanup Services Contracts (ERCS) Users' Manual, June 1986.

OSCs should note that ERCS services are intended for cleanup, and that ERCS may not be used for preliminary assessments, extent of contamination surveys and broad planning activities. These restrictions on the use of ERCS are necessary to avoid a potential conflict of interest or even appearance of a conflict of interest. It is recommended that the ERT and/or TAT be contacted to obtain these services.

Once HQ or the Region has approved a removal action, the Region can access the services of the appropriate ERCS contractor through issuance of a Delivery Order (DO) supported by a Procurement Request (PR). The PR is a document committing funds for a cleanup contractor, while a DO obligates the funds. Although a PR is generally prepared in advance of a DO, the nature of the removal program is such that the documents are often processed simultaneously or based on verbal commitments confirmed later by documentation. Below is a brief summary of ERCS procedures, roles and responsibilities. More complete information is in the ERCS Users' Manual cited previously.

A DO contains the following elements: standard specifications (e.g., accounting data, response time requirements); a statement of work (SOW); a ceiling amount; site-specific health, safety and institutional requirements and terms and conditions. The level of detail in the DO will vary according to the urgency of the removal action. For example, DOs for situations in which the OSC has limited time to assess the nature of the release (e.g., classic emergencies) may contain general descriptions of tasks. For less urgent removals, by contrast, the OSC should prepare a SOW that has detailed descriptions of services, task schedules and deliverables.

Responsibility for preparing, signing and issuing DOs rests with OSCs who have Ordering Officer authority. On approved EPA-lead projects, Ordering Officers may obligate the government and issue DOs up to $250,000. Obligations above that amount for EPA-lead projects as well as DOs for U.S. Coast Guard removals require execution by the Contracting Officer.

General procedures for the preparation, issuance and modification of DOs are as follows:

- The OSC/Ordering Officer should prepare the DO, except for Block 5 (accounting information).

- Depending upon the procedures established in each Region, the Ordering Officer, Regional Financial Management Officer (FMO) or other designated staff will enter the accounting information. The designated individual should obtain a Regional Document Control Number (DCN) and an account number. During duty hours, these numbers will be available from the Financial Management Division. During non-duty hours, the Ordering Officer or FMO should follow established Regional procedures for obtaining these numbers. If the appropriation number and object class category are not preprinted on the DO, the Ordering Officer or FMO should enter these numbers also.

- The PR is prepared and signed according to established Regional procedures. The accounting information on the PR must be identical to that on the DO. The commitment copy should be sent to Research Triangle Park (RTP) at: US EPA, Financial Management Division, (MD-32) Attn: Contracts Financial Operations, Research Triangle Park, NC, 27711. The signed original should be sent to PCMD at: US EPA, Procurement and Contracts Management Division, Superfund Removal Procurement Section (PM-214F), 401 M Street, S.W., Washington, D.C. 20460.

- Once the DO is complete, the Ordering Officer should issue it to the contractor's Program Manager or designee and should send the original signature copy to PCMD and the designated copy to RTP.

- During the response, the OSC/Ordering Officer may determine that a modification to the SOW, completion date or ceiling is needed. The OSC/Ordering Officer is responsible for requesting execution of a written modification from the PCMD Contracting Officer. Most requests can be handled by telephone. The OSC/Ordering Officer should prepare a new PR for the unobligated portion of the new total cost and forward it to the Regional Financial Management Officer for approval. Within one day of return from approval, the Management

Division should assign the appropriate account number and new DCN and send the commitment copy to RTP and the signed original to PCMD. The PCMD Contracting Officer will prepare, sign and issue Standard Form 30 "Amendment of Solicitation Modification of Contract" to the ERCS contractor.

Once the DO is issued and the contractor commences work, the OSC is responsible for monitoring work progress. The contractor should submit to the OSC a separate invoice for each DO, and the OSC must certify each invoice and forward it expeditiously to RTP for payment.

b. REM Contracts

REM Contracts are cost-plus-award-fee contracts generally utilized by the remedial program for remedial planning and construction. Construction may be done by a subcontractor under a fixed price contract. The removal and remedial programs have agreed that these contracts may be appropriate for cleanups at NPL sites.

To obtain REM support, OSCs must contact the REM Regional Project Officer to initiate preparation of the work assignment package in accordance with procedures contained in the Superfund Remedial Project Manager (RPM) Handbook.

c. Other Cleanup Contracts

Current Agency policy is to authorize contracts outside the ERCS system only if ERCS response times are not sufficient.* In the event of a contractor's actual or potential conflicting interest in conducting a specific removal (as determined by the Contracting Officer) or in any other situation in which it is determined to be in the best interest of the government, cleanup services may be ordered from another ERCS contractor or from any other party.

Procedures for and controls on the use of such contracts are as follows:

- The OSC must contact the ERCS contractor and request an earlier response time than has been preestablished for the contract as a whole.

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* U.S. Environmental Protection Agency, Procurement and Contracts Management Division, EPA Emergency Ordering and Acquisition Procedures for Hazardous Substance Response Program, October 9, 1985.

- If the ERCS or Regional ERCS contractor can respond at an earlier time that is acceptable to the OSC, the earlier time is documented on the DO and the earlier agreed-upon time becomes binding on the contractor for that one DO.
- If the ERCS contractor cannot respond within the required time frame, the OSC* is authorized to select a contractor (either a private firm or a State or local government) that can begin work immediately.
- For commercial services that will not exceed $2,500 in cost, the OSC may obtain competition, and may negotiate a fixed price. The OSC should use EPA Form 1900-48, Order for Services.
- Commercial services costing over $2,500, but not more than $10,000, require a Notice To Proceed. A contractor must be selected without competition and only the HQ Contracting Officer may negotiate prices or rates.
- None of these outside contracts (including letter contracts with State and local governments) may exceed $10,000. For letter contracts, this new policy supersedes the Delegation of Procurement Authority under which OSCs previously could obligate up to $50,000.
- The outside contracts must be used only until the ERCS contractor can arrive and take over the removal action.
- The OSC must document, in a separate memorandum to the file, the exact nature of the emergency and the necessity of awarding a separate contract. This replaces the EPA Form 1900-50, Justification for Noncompetitive Procurement, which became obsolete April 1, 1985.

2. TAT Special Projects

TAT Special Projects are to be used to provide OSCs with specialized technical support services for unanticipated tasks that require immediate performance. Examples include specialized laboratory analysis, hazard assessments, specialists, and other support services that are eligible under the special projects scope of work. Because of their relatively high cost to the Agency, TAT Special Projects are to be used only when conventional technical support mechanisms such as Regional analytical laboratories, the NCLP, the ERT and cleanup contractors are unavailable or infeasible. For example, sample analysis usually should be accomplished through Regional laboratories or the NCLP. Command posts usually should be provided by cleanup contractors. When other support mechanisms are not feasible due to the urgency of the situation, TAT Special Projects can and should be used.

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* Only OSCs with a currently written "Delegation of Procurement Authority" from the Procurement and Contracts Management Division (PCMD) to act as a Contracting Officer may secure contractor services outside the existing agency contracts.

TAT Special Projects either can be investigative prior to a removal action approval or in support of an OSC during an approved removal action. All TAT Special Projects costs are eligible for cost recovery. Investigative special projects expenditures (conducted under section 104(b) of CERCLA, as amended by SARA) to identify the existence, extent and threat of a release do not count toward a subsequently established ceiling or statutory $2 million ceiling. All other TAT Special Projects initiated during an approved removal action do count toward the site's approved extramural ceiling and the statutory $2 million limit; therefore, all associated costs must be tracked against these ceilings.

Special Projects requests should be issued by the Deputy Project Officer (DPO) to the respective Regional TAT Leader. If a Special Project is estimated to exceed $10,000, approval of the HQ TAT Project Officer and the HQ Contracting Officer is required before the TAT Special Project can be activated. In addition, when the total of all Special Projects at one site exceeds, or is expected to exceed, $15,000, approval authority must be obtained from the HQ TAT Project Officer as well as the HQ Contracting Officer. The HQ TAT Project Officer will not grant approval until clearance has been received from the Director, ERD. Therefore, to facilitate HQ clearance, it is advisable for OSCs to discuss TAT Special Project needs with ERD before issuing a request in excess of $10,000 for a single Special Project at a site or $15,000 for multiple Special Projects at a site. In addition, a written task description, including the number of hours required to complete the job and the cost, must be submitted on the Technical Directive Document (TDD) for all TAT Special Projects.

3. Use of Interagency Agreements

The OSC is responsible for identifying whether technical assistance from another Federal agency is needed. OSCs may contact the Response Operations Branch of ERD (202-382-2188) for assistance in making initial contact with and arranging for the involvement of the pertinent Federal agency. The USCG will lead all removal responses to releases of hazardous substances in the coastal zone. The expertise and services of other Federal agencies at non-Federal facilities is discussed in Section F.8 of this chapter and in the accompanying exhibit to that section.

In general, there are two mechanisms for funding the response and response-related activities of another Federal agency: that agency's Superfund budget and an Interagency Agreement. The nature of the other agency's involvement will determine the compensation mechanism. For example, if the service provided is defined as an "ongoing" activity for which the other agency has received a Superfund budget, no further transfer of funds will occur. However, if the service involves site-specific response actions, the other agency typically will receive reimbursement through a site-specific IAG. These procedures are described in Section D.3.d below. Special procedures apply to USCG, the Federal Emergency Management Agency (FEMA) and ATSDR as described in a, b, and c below.

a. USCG

A Memorandum of Understanding between EPA and USCG (currently under revision) establishes policies and procedures for USCG use of the CERCLA Trust Fund for costs incurred as part of Superfund response actions. There are two categories of costs that may be incurred under the Trust Fund: vendor costs and non-vendor costs. Vendor costs refer to contractor costs incurred during the course of a response. Contractor support is arranged through existing USCG and/or EPA contractual mechanisms as described in the MOU. All processing of obligating documents and payment of invoices is handled by EPA. Such documents should be sent to Research Triangle Park at: U.S. EPA, Financial Management Accounting Operations Office (MD-32), Attn: Financial Management Officer, Research Triangle Park, NC, 27711.

Non-vendor costs are funded through one of two types of IAGs: site-specific IAGs and ongoing responsibilities IAGs. Site-specific IAGs cover out-of-pocket expenses incurred by the USCG during the course of response. Such site-specific costs include, but are not limited to:

- Travel and per diem for military and civilian personnel
- Salary costs for military and civilian personnel including civilian overtime costs
- Fuel for USCG vessels, aircraft or vehicles used in support of a response activity
- Replacement or repair cost for equipment owned by the USCG.

In situations where the USCG provides assistance in EPA-lead response actions, the Regions are responsible for executing site-specific IAGs. For USCG-lead responses, HQ will process the IAGs. EPA and USCG Headquarters use ongoing responsibilities IAGs to transfer funds annually from the CERCLA Fund to the USCG to cover general costs incurred by the USCG for maintaining response capabilities, such as training and development of guidance. These capabilities also include performing preliminary assessments to establish whether an incident meets the criteria of a CERCLA removal, monitoring non-Federal removal actions, conducting medical monitoring, and maintaining information systems, the National Response Center, work force and USCG enforcement activities.

b. FEMA

A Memorandum of Understanding, dated April 5, 1985 (currently under revision) between EPA and FEMA defines the role of FEMA in removal actions that necessitate temporary relocation. Executive Order 12148 delegates to FEMA the President's authority to provide assistance under the Disaster Relief Act. The OSC has responsibility for evaluating incoming information and deciding to undertake temporary relocation as part of a removal action. In carrying out this responsibility, the OSC must coordinate with FEMA and the pertinent State and local health authorities as follows:

- The OSC may consider temporary relocation on his/her own or at the request of State and local officials.

- In either case, subsection 300.33(b)(6) of the NCP requires the OSC to advise FEMA immediately of any potential major disaster situations as well as situations that may require temporary relocation. OSCs should contact their FEMA Regional counterparts. In order to determine the need for and scope of the temporary relocation, the OSC may request that FEMA provide technical assistance by identifying, evaluating and estimating the costs of alternative temporary relocations. FEMA should report its findings to the OSC as expeditiously as possible.

- The OSC also may rely on State and local information and should request health advice from ATSDR to support the decision to undertake a temporary relocation.

EPA and FEMA Headquarters offices will develop annually an ongoing responsibilities IAG to provide fiscal year funding to FEMA for tasks applying generally to CERCLA relocation activities such as maintaining capabilities and training personnel. In limited circumstances, this type of IAG may also fund site-specific 104(b) activities that take place prior to approval of the removal. Examples are assistance to the OSC in planning for relocation and preparing a relocation option. Such expenditures, however, shall be tracked on a site-specific basis.

All temporary relocation actions are funded through separate site-specific IAGs. This includes planning for relocation or preparing a relocation option before a removal is selected and standard relocation activities. Site-specific FEMA IAGs are negotiated and processed by the Regions. Unlike other agencies that receive reimbursement through an IAG at the completion of response, FEMA receives a transfer allocation prior to the start up of response. ERD is currently developing guidance on temporary relocation procedures.

c. ATSDR

Pursuant to CERCLA and Executive Order 12580, ATSDR has responsibility for conducting health activities relating to the release of hazardous substances. The OSC may request ATSDR assistance by contacting the Region's ATSDR representative at any time during a removal action if the release appears to present an imminent and substantial danger to the public health or welfare. ATSDR may perform on-site health assessments to determine the potential nature and magnitude of any imminent health threat and may issue public health advice. If the ATSDR does issue health advice, the OSC should attach such findings as an appendix to the appropriate Action Memorandum. ATSDR also may provide assistance on worker health and safety issues through an ATSDR IAG with the Occupational Safety and Health Administration and/or the National Institute of Occupational Safety and Health.

Most ATSDR site-specific and all general program activities are funded through the regular Superfund budget process. Funds for these activities are transferred via an annual ongoing responsibilities IAG. Only large-scale, long-term epidemiological site studies would require use of a site-specific IAG. The Memorandum of Understanding between ATSDR and EPA (May 28, 1985) further defines the role of ATSDR and specific financial procedures. Additional information on the role of ATSDR, as provided for in CERCLA, as amended, can be found in Section B.2 of Chapter IV of this manual.

d. Site-Specific IAG Procedures

Regions will develop, negotiate terms and award IAGs for site-specific, EPA-lead actions undertaken at Federal agencies. For these IAGs, Regional personnel should use the following procedures:

- The Regional Program Office defines the scope of work to be performed, outlines the responsibilities of each agency, determines the performance period, identifies primary contacts in each agency, names contractors and the dollar amounts of any contracts, if applicable, and determines the overall reporting, invoicing and amendment requirements

- The Regional Program Office prepares four copies of the Interagency Agreement/Amendment (EPA Form 1610-1), and prepares the commitment notice and the transmittal/decision memorandum

- The Regional Management Division provides financial information for the commitment notice (e.g., document control number, account number, appropriation number), records the commitment of funds in the Document Control Register and forwards a copy of the commitment notice to the Servicing Finance Officer in Cincinnati, Ohio

- The Regional IAG Administration staff reviews the IAG, obtains IAG identification numbers from HQ's Grants Administration Branch, obtains the Regional Administrator's signature and then sends the signed IAG to the other agency for signature

- After the other agency returns the IAG, the Regional IAG Administration staff distributes the executed IAG to: 1) The Regional Management Division finance staff, 2) HQ's Financial Reports and Analysis Branch, 3) HQ's Budget Division, 4) HQ's Grants Administration Division, Grants Information and Analysis Branch, and 5) the Financial Management Center in Cincinnati, Ohio.

IAGs for USCG-lead actions will be prepared and funded by Headquarters. In order to process the IAG as soon as possible after the start of an action, the following information must be provided to the Headquarters Office of Program Management, Financial and Administrative Management Section (FAMS):

- Name and phone number of USCG contact

- Site name and location, removal action start date and projected date of completion

- Expected costs of the removal action including: access control; USCG equipment; USCG regular, reserve and civilian personnel; travel and per diem expenditures; and any other equipment and supply expenditures

- The cost of State reimbursable activities and potential removal activities damage claims.

Within 90 days after the completion of the removal action, the USCG OSC must also submit a final report to FAMS certifying that the removal services have been performed and accepted and that the expenditures are appropriate. The final report should be sent to: U.S. EPA, Office of Program Management, Attn: Chief, Financial and Administrative Section (WH-5480), 401 M Street, S.W., Washington, D.C. 20460. The Region should contact ERD's Response Operations Branch for assistance if other types of IAGs are needed.

4. Use of Cooperative Agreements and Superfund State Contracts

The NCP specifically authorizes the use of Cooperative Agreements for removal actions. Historically, EPA has not used Cooperative Agreements for removals, but with the broadened definition of removals has determined that such agreements are appropriate. OERR has developed policy and procedures for using Cooperative Agreements for removal actions.

Superfund State Contracts (SSCs) are binding agreements between EPA and the State to ensure that the State meets its cost-sharing obligations, complies with the off-site disposal policy, and performs any necessary post removal site control activities. SSCs are in effect for planned removals initiated prior to the revision of the NCP, and OSCs are responsible for continuing to oversee those agreements. In addition, States are required to share in the cost of a removal action if the removal is conducted at an NPL site that was publicly operated at the time of disposal or release of hazardous substances therein and a remedial action is ultimately undertaken at the site. In this situation, States are required to share (50 percent) in the cost of the removal. Policy on future SSCs in the very limited circumstances requiring cost sharing is under consideration.

E. CONTINUING REMOVAL PROJECTS

Removal actions are limited in both cost and duration under section 104(c)(1) of CERCLA, as amended by SARA, and section 300.65(b)(3) of the NCP. Removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after $2 million has been obligated for the action or twelve months have elapsed from the date of initial response unless one of the following two statutory exemptions apply: 1) there is an immediate risk to public health, welfare or the environment; continued response actions are immediately required to prevent, limit or mitigate an emergency; and such assistance otherwise will not be provided on a timely basis; or 2) continued action is appropriate and consistent with the remedial action to be taken. Within the statutory limitations, a removal is limited to the total project ceiling authorized by the AA, OSWER or the RA in the Action Memorandum approving the removal action. Exhibit III-1 depicts the approval process and identifies the proper approval authority for continuing removal actions and obtaining exemptions from the statutory limitations.

In order to exceed the statutory limitations and the total project ceiling, OSCs must obtain special approvals, described below. OSCs should anticipate the need for ceiling increases and exemptions as early in the removal action as possible so that the approval process does not interrupt the continuity of a project. For $2 million exemption requests, the OSC should notify the appropriate ERD Regional Coordinator in advance and submit a draft copy of the request. In addition, OSCs are encouraged to send a final copy of the request to their designated Regional Coordinator to expedite the concurrence process.

1. Ceiling Increases

The initial Action Memorandum approving the removal establishes a project ceiling. This ceiling represents the total funding approved for the removal. RAs may authorize project ceilings up to $2 million, provided the project is not expected to exceed that amount. Therefore, removals begun under the RA's authority should exceed $2 million only due to unforeseen circumstances. Project ceilings initially or ultimately over $2 million require the approval of the AA, OSWER.

OSCs cannot incur costs in excess of the project ceiling, unless they request and obtain a ceiling increase. This requirement applies to both RA-approved removals as well as AA-approved projects that have a $2 million exemption. The $2 million exemption establishes a new project ceiling; thus, if additional funding beyond the new ceiling is necessary, the OSC must obtain an additional ceiling increase from the AA, OSWER.

The request for a ceiling increase should contain the information shown in the model request in Appendix 10. The level of detail required will vary according to site-specific circumstances. In general, the request should include information on the current site conditions, actions taken to date, costs to date, and the reasons why the ceiling increase is required (e.g., changed site conditions or increased disposal cost). It is important to explain whether the increase is 1) to perform more work to mitigate the threat in the original scope of work, or 2) to respond to an additional threat to human health, welfare or the environment, not previously documented, requiring additional removal measures. If the ceiling increase is to address additional threats, the request for a ceiling increase should contain a new finding that the threats meet the criteria of section 300.65(b)(2) of the NCP.

a. Regional Approval

The RA has authority to approve ceiling increases up to $2 million, provided the removal action is not expected to exceed $2 million. This authority applies to cleanup contractor costs, letter contracts with States, site-specific IAGs, EPA Regional laboratories, EPA intramural costs, and costs associated with TAT, NCLP and the ERT. The Region must transmit to ERD, within five days of the RA's approval of the ceiling increase, a copy of the signed Action Memorandum. This must provide the information specified above and should be in accordance with the format specified in Appendix 10. The submission should be made by pouch mail. The Region should also notify the Response Operations Branch, ERD by phone (#8-382-2188) or TWX (#710-82-9269) of the ceiling increase approval as soon as possible.

b. Headquarters Approval

In two circumstances the AA, OSWER must approve the ceiling increase: to initially authorize costs expected to exceed $2 million (as described in Section C of this chapter) and to authorize subsequent increases in funding. Ceiling increase requests that require HQ approval must be submitted under the signature of the RA and must include the information outlined in Appendix 10. If the AA, OSWER has not previously approved a $2 million exemption, the RA's request for a ceiling increase should accompany the request for an exemption.

If the AA, OSWER has previously approved a $2 million exemption, and the proposed work and ceiling increase are to respond to a new threat, the OSC should discuss in the ceiling increase request the additional threat and demonstrate how the new threat meets the statutory criteria for exemption. In addition, if the proposed work and ceiling increase are to respond to the original threat, the OSC should mention this in the Action Memorandum.

The RA should send the request for a ceiling increase to the AA, OSWER through the Director, OERR to the attention of the Director, ERD. A copy should be sent to the appropriate ERD Regional Coordinator. The Regional Coordinator is responsible for coordinating the HQ concurrence process, which involves several offices. Therefore, to ensure expeditious, smooth processing of the request, the OSC should contact the Regional Coordinator in advance.

2. Twelve-Month Exemptions

Pursuant to Delegation 14-1-A "Selection and Performance of Removal Actions Costing up to $2 million" the RA may approve all exemptions to the twelve-month limit. The twelve-month time period will commence on the day on-site work begins under removal authority, excluding any time spent doing 104(b) investigations, monitoring surveys, or other information collection prior to the approval of a removal action and excluding any time spent procuring a cleanup contractor or conducting any other off-site planning activities after approval of the removal action. It does not mean the date that the Action Memorandum was signed approving the action or the date of initial obligation unless on-site work begins that day.

The time limit for an individual removal action shall expire twelve months, in calendar days, from the date on-site removal work began. For example, the twelve-month time period for a removal begun on June 14, 1987, would expire on June 14, 1988. A removal will be considered completed for the purposes of the time limit when all response actions approved are completed and the contractor and OSC have permanently demobilized. Temporary demobilization and temporary storage onsite are not considered completions, unless temporary storage is the only action identified in the Action Memorandum to mitigate threats to public health, welfare and the environment. Likewise, temporary off-site storage of hazardous substances at a storage, treatment, and disposal (TSD) facility other than the facility of ultimate disposal is a continuation of the removal action, not a completion. For additional information on determining removal action closing dates, OSCs should refer to the October 24, 1986 memorandum from the Director, ERD entitled "Removal Completion Date Definition."

In tracking the twelve-month limit at sites that have had multiple removal actions, the OSC should count the total elapsed time since the initial response (i.e., the first day on-site removal response began at the site). Thus, if the OSC completes a six-month removal, and returns four months later to undertake three more months of removal action to address new threats, the total duration of the removal would be thirteen-months, necessitating a twelve-month exemption.

In accordance with section 300.65 of the NCP, the OSC should review the status of removal activities and site conditions at the earliest possible time to determine the need to exceed the twelve-month limit. The following circumstances are considered check points and should trigger the review if it has not already occurred:

- Nine months has elapsed since removal began
- The contractor's estimate of the response time requirements exceeds twelve months
- Any time during the removal action the OSC believes completion of the response will require more than twelve months.

The OSC should notify ERD through a phone call and a POLREP as soon as an exemption to the twelve-month limit appears necessary. The OSC then must prepare an exemption request in the form of an Action Memorandum (Appendix 9) and submit it to the RA for approval. The OSC should send a copy of the approved request to the ERD Regional Coordinator.

A request for a twelve-month exemption must document that continuation of the removal meets the statutory exemption discussed under either (a) or (b) below and in section 104(c)(1) of CERCLA, as amended by SARA:

(a)(i) Continued response actions are immediately required to prevent, limit or mitigate an emergency -- The request should describe the status of current activities and reasons for non-completion within the statutory limits, recommended additional removal actions, the time required for these actions and an estimate of their effectiveness in mitigating the threat.

(ii) There is an immediate risk to public health or welfare or the environment -- The request should contain an evaluation of the nature of the immediate threat that will continue to exist if work is halted when limits are reached, including hazardous substances involved and estimates of the amounts; human populations and environmental resources threatened and the nature of that threat (e.g., the substances will contaminate the drinking water supply, destroy livestock or crops, explode and endanger a residential area); and the amount of threat involved (i.e., in the best judgment of the OSC, the likelihood that such damage will occur if removal is not continued).

(iii) Such assistance will not otherwise be provided on a timely basis -- The request should describe the expected timetable for completion of removal work at the site, any projected remedial work, and other parties who are willing or who could be made to respond, efforts to get them to respond and the results of those efforts, including the status of any enforcement activities.

(b) Continued response actions are otherwise appropriate and consistent with remedial action to be taken -- The request should describe how the proposed response actions to continue a removal satisfy the requirements for the consistency exemption (guidance on the consistency exemption is under development).

The RA will make decisions on requests for twelve-month exemptions and communicate these decisions verbally and in writing to the OSC. The RA may grant an exemption for a specific period or an indefinite period (i.e., until remedial activities begin). If the RA approves an exemption for a specific time period and further work will be required after the exemption expires, the OSC must submit a new request for exemption that demonstrates that the removal still meets the exemption in either (a) or (b) above and in section 104(c)(1) of CERCLA, as amended.

3. $2 Million Exemptions

The $2 million limit is defined in terms of obligations from the CERCLA Fund. The following costs count toward the RA's authority to obligate removal actions up to $2 million: All previous obligations at a site which include extramural costs (which include ERCS and other cleanup contracts, TAT, CLP, letter contracts with States and local governments and commercial contractors, IAGs, and Response Engineering and Analytic Contract (REAC)); HQ and Regional intramural costs, which encompass EPA Regional laboratories and Headquarters and Regional direct intramural costs (site-specific salaries, travel, per diem, and overtime), and indirect costs (Headquarters and Regional management, administrative costs and fringe benefits).

The cost of enforcement activities and 104(b) investigative activities do not count towards the limit. These costs are defined as: 1) payroll hours charged to the site by technical enforcement personnel in the Regions and Headquarters; 2) payroll hours charged to the site by Regional and Headquarters legal personnel; 3) enforcement-related contract support tasks such as responsible party searches and financial assessments (this work is generally contracted under the Technical Enforcement Support contract); and 4) travel costs charged to the site for technical enforcement and legal personnel in the Regions and Headquarters. However, the documentation and evidence collection efforts (e.g., sampling to document the presence of a hazardous substance) to support sustaining removal activity and possible cost recovery action should not be considered as enforcement costs, and thus do count against the $2 million limit. Costs associated with CERCLA 104(b) investigative activities are also excluded from the $2 million limit. State-funded activities do not count towards the limit because they are not reimbursed by the Fund.

In tracking the $2 million limit, OSCs should count the cumulative response costs of removal actions at a site. Thus if the OSC completes a removal (i.e., demobilizes), but later returns to the site to respond to new threats (i.e., a restart), the total costs of the initial removal response and restart count towards the limit. If the restart will cause total CERCLA removal funding at the site to exceed $2 million, the OSC must obtain an exemption.

a. Regional Responsibilities

In accordance with section 300.65(b)(4) of the NCP, the OSC shall, at the earliest possible time, determine the need for a $2 million exemption and should initiate the request. The following situations are considered check points and should trigger an OSC review if it has not already occurred:

- When the estimated total cost approaches $1.6 million
- When an estimate has been received from a contractor that project costs will exceed $2 million
- If at any earlier time during the removal action, the OSC believes that the $2 million limit will be exceeded.

Once the OSC has determined that the removal project will require obligations in excess of $2 million, the OSC must obtain, through the RA, the approval of the AA, OSWER. For actions initially expected to exceed $2 million, the exemption request should be included in the Action Memorandum requesting AA approval to initiate removal action (see Appendix 7). For actions later determined to require more than $2 million, the $2 million exemption/ceiling increase request should be in a separate Action Memorandum. Appendix 12 provides a model outline to aid the OSC in preparing the exemption request.

The request for both actions initially and ultimately costing over $2 million must document that continuation of the removal beyond the $2 million limit will meet one of the two exemptions in section 104(c)(1) of CERCLA, as amended by SARA. To obtain an exemption from the $2 million limitation, the site must meet either (a) or (b) listed below. Approval authority for the new exemption may be delegated from the AA, OSWER to the RA on a case-by-case basis. Thus the request should provide the following information:

(a)(i) Continued response actions are immediately required to prevent, limit or mitigate an emergency -- The request should describe the status of current activities, including the obligations to date that count against the $2 million limit, and reasons for non-completion within the statutory limit; recommended additional removal actions, their costs and their effectiveness in mitigating the threat.

(ii) There is an immediate risk to public health or welfare or the environment -- The $2 million exemption request should contain the same information as a twelve-month exemption request.

See Section E.2.(a)(ii) for a discussion of the information that should be provided in a twelve-month exemption request.

(iii) Such assistance will not otherwise be provided on a timely basis -- The request should describe the expected timetable for continuing and completing the removal; any projected remedial work; and other parties who are willing or could be compelled to respond and the results of those efforts, including the status of any enforcement activities.

(b) Continued response actions are otherwise appropriate and consistent with remedial action to be taken -- The request should describe how the proposed response actions to continue a removal satisfy the requirements for the consistency exemption (guidance on the consistency exemption is under development).

A model $2 million exemption request outline is included in Appendix 12.

The Action Memorandum requesting the $2 million exemption also requests a new project ceiling. An example of this type of situation would be a removal action that currently has a project ceiling of $1.6 million originally approved by the RA. The OSC discovers that an additional $460,000 will be necessary for project completion. The OSC would prepare the $2 million exemption request to document meeting the statutory criteria of section 104(c)(1) of CERCLA, as amended. The AA, OSWER would approve the $2 million exemption request and establish a new ceiling ($2.06 million based on the above example) by approving the RA's recommendation in the exemption request.

Because actions initially expected to exceed $2 million require the approval of the AA, OSWER, RA-approved removals should require $2 million exemptions only in very limited circumstances. For example, for classic emergencies the OSC and RA may not be able to predict ultimate project costs at the beginning of the action and even for quite some time after response is initiated. In these cases, it may be appropriate for the RA to approve ceiling increases in increments until determining that project costs will exceed $2 million. As soon as the OSC makes that determination, the OSC must prepare a $2 million exemption request for the RA to submit to the AA, OSWER. A new project ceiling would be established when the AA approves the $2 million exemption request.

b. Headquarters Responsibilities

The processing of the $2 million exemption request involves several offices in Headquarters. In order to ensure that this processing is as smooth and expeditious as possible and does not prevent continuation of the response, OSCs should adhere to the following guidelines. As with a twelve-month exemption, the OSC should notify the appropriate ERD Regional Coordinator by telephone as soon as possible after determining the need for a $2 million exemption. The ERD Regional Coordinator is responsible for coordinating the approval process and also is available to advise the OSC and/or to assist in drafting the Action Memorandum. The Action Memorandum should be addressed from the RA to the AA, OSWER, through the Director, OERR to the attention of the Director, ERD so that the appropriate Regional Coordinator will receive it expeditiously. This is especially critical when, because of unforeseen circumstances, little time is available to process the request. It is recommended that urgent requests initially be telefaxed (#202-755-2155), and that the original be sent by pouch mail to ERD.

Decisions on $2 million exemption requests will be made by the AA, OSWER and communicated through the Director, ERD to the OSC verbally and in writing. The OSC should carefully track project costs against the new ceiling established by the $2 million exemption. Since only one such exemption is necessary, any subsequent funding increases should be processed as a ceiling increase and require the approval of the AA, OSWER.

4. Significant Changes in Scope of Work with No Cost Increase

If a significant change in scope of work is necessary to complete an approved removal action, but no change in total project ceiling is required, the OSC must prepare an amended Action Memorandum. These requests require the approval of the official who authorized the original removal action. Appendix 13 of this manual provides a model Action Memorandum to assist OSCs in preparing these requests. The Action Memorandum will document the change in scope of work and redirection of funds required for the new tasks to be performed. For example, the original Action Memorandum may have identified incineraton as the method of waste disposal; however, the OSC may find that incineration is not a feasible option and wastes will have to be disposed of off-site. Changes to a project scope of work that increase the total project ceiling will be approved/documented in a ceiling increase request described in Section III.E.1 above.

F. MANAGING REMOVAL PROJECTS

This section provides guidance on the roles and responsibilities of OSCs when managing removal projects. A variety of topics are addressed, including oversight of contractors, allowable costs, cost management, access agreements, health and safety, community relations, States' role, the role of Federal agencies at non-Federal facilities, and recordkeeping requirements.

1. Oversight of Contractors

OSCs have complete responsibility for directing response operations. This means that they must ensure that all on-site activities are consistent with CERCLA, the NCP and program policies and procedures; that all expenditures of funds are appropriate and reasonable; and that subsequent cost-recovery actions will be supportable.

A major OSC role is oversight of the contractors performing cleanup activities. Examples of oversight activities include:

- Preparation of the work report
- Review and certification of the Contractor Cost Report (EPA Form 1900-55), which enumerates daily contractor services and associated costs
- Daily monitoring of contractor personnel and equipment to verify satisfactory completion of the work report
- Determination of the overall project status.

In carrying out these oversight activities, OSCs may request support from TAT. Examples of such support are maintaining entry/exit logs of all contractor personnel and equipment, communicating verbal or written messages from the OSC to the cleanup contractor and maintaining logs related to project costs. The TAT staff, however, may not assume the OSC's responsibilities for directing site activity, verifying satisfactory completion of work or approving the Contractor Cost Report (EPA Form 1900-55).

Compelling circumstances, such as another removal incident, may require the OSC to leave the site for more than 24 hours. Section 300.33(b)(3) of the current NCP authorizes the OSC to designate capable persons from Federal, State and local agencies to act as OSC representatives to supervise response operations; TAT staff, because of their non-governmental status, may not be designated OSC representatives.

The NCP and program policy dictate the following guidelines for and limitations on the designation and activities of OSC representatives:

- Federal employees — The preferred designee would be another Federal employee because such a designee would have authority to direct, not merely oversee, contractors; to initiate activities involving expenditures of money; and to certify completion of work and costs. Examples are another OSC, a non-OSC Superfund employee, a non-Superfund employee from within the Region; an OSC or other employee from another Region; HQ personnel; or employees from another Federal agency such as USCG. As a practical matter, reassignment of staff from other duties is not likely to be very flexible, particularly with respect to personnel outside the program, Region or Agency. Moreover, designation of a Federal employee who did not have adequate training in program procedures and response operations could endanger the response.

- State/local staff -- The NCP precludes State and local officials from taking any actions involving expenditures of Trust Fund monies, unless an appropriate contract or Cooperative Agreement has been executed. In practice, this means that State and local representatives may transmit and supervise the implementation of the OSC's work orders but may not provide new instructions.

- TAT -- TAT personnel may not serve as OSC designees; they may, however, continue to provide support services at the site and monitor cleanup contractor performance in the absence of the OSC.

Because of the practical difficulties in designating an OSC representative who can assume full on-site responsibilities, OSCs are discouraged from leaving the site except in very limited circumstances. Examples of such circumstances are when EPA has a contract with a State or local government to provide water hookups or when the site clearly has "insignificant" activity (e.g., a pump running).

2. Allowable Costs

During a removal action, the OSC is authorized to incur costs provided they qualify as appropriate uses of the Fund. These costs must be directly allocable to a particular response, reasonable and necessary to accomplish the response.

a. Allowable Costs for Fund-Financed Removals

Exhibit III-2 summarizes both extramural and intramural costs that are allowable. To assist OSCs in tracking indirect costs, the Financial Management Division issues EPA indirect cost rates and the Removal Cost Management Manual establishes ERD policy on estimating indirect costs.

b. Allowable Costs for Response Oversight

Costs incurred by OSCs, both intramural and extramural, associated with oversight of non-Federal removal actions are allowable.

c. Non-Allowable Costs

Removal costs not allowed include:

- State and local costs for which prior authorization was not specifically given by the OSC or addressed in a Cooperative Agreement or Superfund State Contract or procurement contract (e.g., municipal services such as use of police or fire departments and State personnel who are on-scene performing tasks not specifically requested by the OSC).

- Costs to restore release-related damages to property (as opposed to response-related damages). Release-related damages are those that occur as a direct result of the release of a hazardous substance (e.g., poisoning of fish or livestock). There is no payment of natural resources damage claims from the Trust Fund.

- Costs for the research and development of equipment and response technologies used in conjunction with a removal action, e.g., innovative disposal technologies. Funding may be available, however, under CERCLA section 311(b), as amended by SARA. If such situations arise, the OSC should contact OSWER's Office of Program Management and Technology.

- Costs for removal of petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

- Costs incurred by a contractor in providing response measures, for which that contractor is later found to be liable.

More complete guidance on allowable costs is currently being developed by OERR.

3. Cost Management

During removal actions, all Regions must implement an effective system for managing response costs. This management system must ensure the efficient use of public monies, must enable all removal costs to be tracked against program and statutory dollar ceilings, and must provide the necessary information to support cost recovery actions.

Ultimate responsibility for cost management rests with the OSC. Detailed guidelines for the OSC are in the Removal Cost Management Manual (currently being revised) that EPA published in January 1985. That manual identifies four components of cost management — cost projection, cost control, cost recovery, and cost documentation — which are summarized briefly below.

a. Cost Projection

The key to effective cost management is thorough cost projection prior to the startup of a response, as well as during a response. Pre-response estimates of costs form the basis for

EXHIBIT III-2
Allowable Costs for Superfund Removals

EXTRAMURAL COSTS*

- Cleanup contractor and consulting costs, including waste cleanup, transportation and disposal, now provided principally under the Emergency Response Cleanup Services (ERCS) contractor system and supplemented as needed by non-ERCS commercial contractors
- Support contractor costs, including Technical Assistance Team (TAT), REAC, NCLP, FIT and TES
- Other Federal agency vendor and out-of-pocket costs as either ongoing responsibilities or through a site-specific IAG
- State and local assistance obtained through a procurement contract (Order for Services or Letter Contract with State and local governments)**

INTRAMURAL COSTS

- EPA direct costs, including the salaries, overtime, travel and per diem of on-site EPA personnel
- Direct costs incurred by EPA's Environmental Response Team
- Direct costs incurred by EPA's technical and legal enforcement personnel in HQ and the Regions related to cost recovery actions
- Indirect expenses including EPA Regional and Headquarters management and administrative costs and fringe benefits
- EPA Regional laboratory costs.
- Other costs such as EPA leasing or rental of equipment; incremental costs for EPA-owned equipment; supplies, materials and equipment (including transportation costs) procured for the specific removal activity and fully expended during the removal; access/right-of-way payments to landowners who are not potentially responsible parties; EPA-paid utilities.

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* Extramural costs are subcategorized into 1) mission support costs, such as TAT and NCLP, which are funded out of Headquarters; and 2) cleanup contractor costs, which are funded from each Region's removal allowance; these costs include ERCS or other cleanup contractor costs, State or contractor costs procured through a Letter Contract, and other Federal agency costs procured through IAGs.

** These costs also must be allowable in accordance with OMB Circular A-87 establishing cost principles for State and local governments.

establishing a total project ceiling recorded in the Action Memorandum; cost projection during a response allows the OSC to anticipate the need for increases in the project ceiling or an exemption to the $2 million statutory limit.

b. Cost Control

Cost control consists of cost planning and monitoring as well as verification of costs. OSCs are in the most advantageous position to control response costs if they keep informed on the availability of cost-effective resources. Thus, OSCs should: identify non-commercial support services and response equipment available to the Region; familiarize themselves with cost-effective cleanup services in the event contracting outside the ERCS network is required; maintain information on the cost of obtaining, operating and maintaining safety equipment; and review OSC reports of costs at past responses.

In addition, OSCs are responsible for monitoring site work and verifying that the contractor has provided the personnel, equipment, expendables and subcontractors for which it has charged the government. Section F.3.c below discusses these cost control functions more fully. OSCs should note the strict limitations under the NCP and EPA contract management policies for delegating these responsibilities to non-Federal personnel such as the TAT or State officials not operating under a Cooperative Agreement.

c. Cost Documentation

Cost documentation refers to the specific set of procedures that OSCs use to maintain a record of all on-site activities and associated costs. The method of cost documentation must be consistent from day to day at a specific response. The method an OSC selects must ensure thorough recordkeeping on the following six information items:

- Chronology of events and decisions
- Site conditions
- Movement of personnel and equipment (e.g., site entry and exit)
- Contractor planned and authorized work compared to actual accomplishments
- Contractor costs (e.g., commercial cleanup contracts, letter contracts with States and localities)
- Oversight costs where PRPs undertake action and the Administrative Order does not waive oversight costs

- Other costs (e.g., NCLP services, TAT, ERT, Regional laboratory services, IAGs, direct HQ and Regional intramural obligations, site access/acquisition).

The Removal Cost Management Manual provides guidance on methods OSCs can use to determine each category of cost and includes examples of the various types of documents OSCs can use to record information (e.g., POLREPs, entry/exit log, incident obligation log).

OSCs should note that the specific cost items to be documented vary depending upon the purpose of the documentation. Tracking actual costs against the project ceiling and $2 million limit, for example, does not include costs associated with 104(b) investigations; such costs are tracked, by contrast, in order to support a cost recovery action.

d. Importance of Cost Documentation

Due to the possibility of a cost recovery action or other circumstance (e.g., a challenge to the selection of response action, a claim for reimbursement under CERCLA §106(b)) for any case involving the expenditure of CERCLA funds, OSCs have a responsibility to observe, document and preserve critical facts about the response and its costs. The cost documentation efforts described above are designed to assure that potential evidence concerning the release and responsible parties is recorded before response activity or the passage of time obscures or eliminates it; that physical evidence essential for a trial is collected and preserved in a manner that will withstand judicial scrutiny; and that the government has maintained sufficient evidence of total costs and substantiation of the need to incur those costs.

The essential elements of a cost recovery action and the nature of evidence required to sustain such an action are:

- Evidence of a release or threat of release of a hazardous substance

- Evidence of the liability of the defendant(s) under §107(a) of CERCLA for the hazardous substance

- Substantiation that response actions for which CERCLA funds were expended were not inconsistent with the NCP

- Proof of incurred costs.

Further guidance on this subject has been issued by the Office of Enforcement Counsel and Compliance Monitoring and OSWER. See "Guidance On Pursuing Cost Recovery Actions Under CERCLA," August 1983 and "Procedures for Documenting Costs for CERCLA §107 Actions" issued by OWPE (January 30, 1985).

4. Access Agreements

EPA may need to obtain access to the propety where the removal may or will take place or to the property adjoining response action sites. EPA's policy on access is set forth in OECM's memorandum entitled "Entry and Continued Access under CERCLA" (June 5, 1987).

a. Obtaining Access

The State should arrange for access to the site. However, the OSC is ultimately responsible for obtaining site access agreements. Consequently, the OSC will need to work with the State to ensure that all arrangements are made. Typically, the State will approach the property owner and the final access agreement will be drawn up either between the landowner and the State or directly between the landowner and EPA or other appropriate Federal Agency. In either case, the OSC is responsible for overseeing the site access negotiations and agreements. However, the OSC does not possess the authority to agree in writing or verbally to conditions of entry. The OSC may not agree to hold the PRP harmless for injuries or damages in return for site access. Nor may the OSC agree in return for site access that the propety holder will not be held liable, or agree to compensate the owner. The OSC should not agree to a permanent time limitation on access.

Property access agreements must be reviewed by Regional Counsel. The OSC should consult with Office of Regional Counsel when the State has no legal authority to gain access, such as rights-of-way for public utilities, railroads, and Federal lands.

The OSC may encounter property owners who are uncooperative. Owners may refuse access to or through their property to the removal site or they may threaten removal personnel or interfere with removal actions. In these cases, the OSC should seek assistance from State and local authorities. If this assistance is unavailable or is insufficient, the OSC may request through the ORC a Federal court order to ensure access or restrain the threatening party from interfering with removal activities. The court may dispatch U.S. Marshals to enforce the order and to protect removal personnel. The cost for U.S. Marshals is covered under CERCLA and counts toward the statutory $2 million limit on removal actions. The cost of Department of Justice (DOJ) support is covered by a site-specific IAG.

To obtain a Federal court order, the OSC must request the Regional Counsel to arrange with DOJ attorneys to file a civil complaint in U.S. District Court. Before Marshals can be dispatched, the OSC must request HQ to draft an IAG to cover the cost of U.S. Marshal support. Whenever such situations arise, the OSC should contact the ERD Regional Coordinator for assistance.

b. Payments for Access/Indemnification

Generally, the Agency will not pay property owners for rights-of-way or easements for property adjacent to the site or within the site boundaries. In cases where payment or indemnification of the property owner becomes an issue in arranging for site access, the issue should be referred to the Regional Counsel or the ERD Regional Coordinator for assistance. Under Delegation of Authority 14-30, signed September 13, 1987, decisions to acquire an interest in property (e.g., an easement or right-of-way that lasts beyond relatively short term access) OSCs will be required to obtain advance concurrence from the AA, OSWER and OGC.

c. Property Damage

Damage or contamination to land or property incurred during a response action may be compensable by the Agency, particularly where the release was on property of an innocent party. Generally, the OSC should attempt to restore the property to its pre-response condition (e.g., regrading and reseeding a temporary site access road). Where there is contamination, the OSC may arrange for disposal. In cases where property damage assessments are necessary to recommend fair compensation to the owner for all damages, the OSC should consult with the Office of Regional Counsel to determine the appropriate next step. If the amount or type of compensation becomes an issue, the OSC should continue consultation with the Regional Counsel or contact the ERD Regional Coordinator.

5. Worker and Visitor Health and Site Safety

Pursuant to section 126 of SARA, and section 300.38 of the NCP, response actions are subject to all applicable Federal, State and local Occupational Safety and Health (OSH) laws. Standards of the Occupational Safety and Health Administration (OSHA) form the basis for the safety and health protection of workers involved in hazardous substance response activities. Where State OSH laws exist (currently 25 States/territories have such laws), these laws may also apply to response actions. The safety and health requirements of other Federal agencies may also apply (e.g., DOT requirements for hazardous materials carriers). The requirements discussed in this Section apply to Federal agencies and contractors involved in Fund-financed response and to responsible parties when undertaking response.

a. Fund-Financed Response

For Fund-financed response, all Federal, State and contractor personnel involved are required to comply with the lead agency's overall occupational safety and health policies and with a site-specific safety plan. EPA issued the Standard Operating Safety Guidance in November 1984 to supplement Chapter 9, "Hazardous Substance Responses," of EPA's Occupational Health and Safety Manual (May 1984) and EPA Order 1440.2, "Health and Safety

Requirements for Personnel Engaged in Field Activities" and EPA Order 1440.3, "Respiratory Protection." EPA, the National Institute of Occupational Safety and Health (NIOSH), OSHA and the USCG have jointly developed the Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (October 1985) to provide general guidance for developing site-specific health and safety programs.

In addition, OSHA has issued the "Hazardous Waste Operations and Emergency Response Interim Rule" (29 CFR 1910.120, December 19, 1986) which sets forth the Federal requirements for safety and health programs. In accordance with SARA section 126, EPA must promulgate standards identical to OSHA's worker protection standards regulation. EPA's rule will apply to employees of State and local governments in States that do not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970. Together, the guidances listed above and OSHA's interim rule form the basis for EPA's worker health and safety program at response sites. Pursuant to the Standard Operating Safety Guidance, each Regional Office must develop standard safety procedures, consistent with appropriate OSHA and State requirements.

Because response activities associated with each specific incident are unique, standard procedures will often have to be adapted or modified to meet the incident-specific requirements. For this reason, a written safety plan must be prepared for each incident, distributed and posted in the command post. This should be done, if possible, before removal operations begin on the site. If it is not done before on-site operations begin, it should be done as soon as possible thereafter. Under OSHA's Interim Rule, site safety plans must cover all phases of incident operations and identify key personnel and must be updated or modified as needed or as conditions change. As a minimum requirement, safety plans should address the following:

- Names of key personnel and health and safety personnel
- Task/operation safety and health risk analysis including an evaluation of hazardous substances involved or expected at the site and their chemical and physical properties
- Employee training for all equipment operators and general laborers who risk exposure to hazardous materials
- Establishment of personal protective equipment to be used
- Establishment of medical surveillance requirements including medical examinations at least once every twelve months for all employees (including hazardous materials employees) who may be exposed to hazardous substances at or above the Permissable Exposure Limits for at least 30 days per year

- Establishment of frequency and types of air monitoring, personnel monitoring and sampling techniques
- A site control program consisting of a site map, site work zones, buddy system, site communications, safe work practices and identification of nearest medical assistance
- Decontamination procedures including an emergency response plan which addresses site security and controls, evacuation routes and procedures, decontamination, emergency medical treatment and first aid, emergency alerting and response procedures, critique of response and follow up, and personnel protective equipment and emergency equipment
- Site standard operating procedures
- Contingency plan
- Confined space entry procedures.

OSCs are responsible for ensuring that workers and visitors are apprised of on-site hazards and the provisions of the site health and safety plan. The OSC shall ensure that all individuals entering the site (e.g., EPA, TAT, contractors, press) have read the site safety plan and signed a form indicating that they have read the plan and understand its contents.

The OSC must be cognizant of on-site health and safety activities and is responsible for monitoring Federal and contractor compliance with EPA and site safety requirements and applicable Federal and State laws and regulations. However, OSCs are directly responsible only for their own staff. Pursuant to NCP section 300.38(a), each government agency and private employer is responsible for the health and safety of its own employees and for ensuring compliance with OSHA requirements, applicable State OSH laws and with Agency health and safety programs. The Agency will not assume responsibility for other government or contractor personnel.

OSHA has authority for enforcing compliance with Federal OSH regulations. Response actions are subject to OSHA inspections. Where State OSH laws exist, State inspections may take place. The OSC has no power to enforce safety requirements. However, if the OSC discovers an infraction of safety requirements, the OSC has responsibility for informing all site personnel and visitors of such requirements. Should the infraction continue, the OSC may call in OSHA or State OSH inspectors to review practices to ensure compliance.

Also, throughout the response action, the OSC may call upon OSHA to advise on worker health and safety issues. When needed, the OSC may request that NIOSH provide assistance to OSHA in testing worker protection equipment and gathering information for guidance on safety issues.

b. Responsible Party Response

The NCP requires that responsible parties ensure that response actions they take provide adequate health and safety measures for their workers. The responsible party must develop a site safety plan that is consistent with all applicable Federal and State OSH laws. Workers entering the response site must be apprised of response site hazards and provisions of the safety and health program. The responsible party is ultimately responsible for worker compliance with provisions of the site-safety plan.

The OSC, when monitoring responsible party response actions, is responsible for reviewing the safety and health measures developed by the responsible party and for monitoring compliance with these measures. The OSC also is responsible for reporting failure of a responsible party to ensure adequate worker health and safety measures to the responsible party's Project Manager or its designated health and safety representative. In cases where an OSHA violation has occurred, OSCs may request OSHA to conduct a health and safety inspection.

6. Community Relations and Public Information

Community relations is a two-way communication network between government response officials and the communities affected by releases of hazardous substances, including PRPs. The objectives of community relations are: (1) to identify citizen leaders, public concerns, and a site's social and political history; (2) to encourage citizens to express concerns and provide information; (3) to incorporate citizen comments and concerns into the decision-making process; and (4) to provide information to the community on the health and environmental effects of releases and proposed response action. Planning for community relations during removals entails:

- Obtaining background information on the community affected by the release of hazardous substances and the possible effects of the release
- Developing a community relations program that meets the special needs of the community
- Establishing a working relationship between the OSC, TAT, Superfund Community Relations Coordinator, RRT, and other governmental agencies involved in the response action
- Compiling and maintaining an Administrative Record for public inspection of and comment on the selection of CERCLA response actions available.

In each Region, the Superfund Community Relations Coordinator, OSC and/or responsible program technical office will coordinate fully in planning and implementing community relations activities for Superfund removal actions. For removal actions, community relations plans (CRPs) may be prepared by the Regional Community Relations Coordinator in consultation with the OSC and/or removal program technical staff, and in accordance with EPA's Community Relations Policy (May 1983) and the interim final Community Relations Handbook (March 1987). Regions are encouraged to consider use of the RRT to assist in community relations activities. Responsible parties may participate in implementing elements of the CRP at the discretion of, and with oversight by, Regional staff. The lead agency develops the Community Relations Plan. EPA is responsible for ensuring that an Administrative Record will be made available to the public at or near the site.

a. Community Relations

Under current requirements, a community relations plan should be prepared for all response actions lasting longer than 45 days, however, proposed changes to the NCP would require CRPs to be prepared for only those response actions lasting longer than 120 days. At these removal sites the focus of community relations should be on establishing an integrated communications network that can continue after the initial emergency has abated. Prior to preparing a CRP, program and community relations staff must meet with local officials and interested citizens to obtain information about the site and to identify public concerns. The plan should succinctly state the site background, the nature of the community concern, the key site issues, the objectives of the community relations activities, and specific activities to be undertaken at the site.

Specific types of community relations activities during removals are likely to include meeting with citizens in the community, responding to inquiries from the media, and providing local officials with site status information. By providing information as directly and quickly as possible, the OSC will ensure that the community receives the information it needs about the government's response action and the effects of the release on the community's health and safety.

b. Administrative Record

The Administrative Record is a collection of information that the Agency considers or relies on in selecting a response action. Section 113(k) of CERCLA requires EPA to establish Administrative Records containing documentation of the selection of CERCLA response actions. CERCLA section 113(k)(2) requires that interested persons be given an opportunity to examine and comment on the Administrative Record. Therefore, except as noted below, interested persons, including PRPs and the local community, must be given an opportunity to examine and comment on the Administrative Record.

Currently, EPA is developing regulations on Administrative Records to be published as Subpart I of the NCP and guidance on Administrative Records to be issued as OSWER directive #9833.1A, "Interim Guidance on Administrative Records for Decisions on Selection of CERCLA Response Actions." Exhibit III-3 depicts the various proposed activities EPA is considering as requirements when establishing an Administrative Record for each of the removal categories as defined in Section B.2 of this chapter. The requirements for each removal category differ to ensure that the Administrative Record does not unduly burden the Agency or create delays in emergency and time-critical removal actions. Administrative Record requirements for removal actions are summarized below. OSCs should refer to OSWER directive #9333.3, "Administrative Records for Decision on Selection of CERCLA Response Actions" (May 29, 1987) for information on the specific documents that should be included in Administrative Records for removal actions. For all removal actions, documents generated after the Action Memorandum is signed may only be added to the Administrative Record if they concern issues that were specifically reserved or support an amended Action Memorandum.

For removal actions performed in response to classic emergencies and lasting less than 30 days, the following requirements apply:

- The Administrative Record file (i.e., the incomplete record as it is being compiled) must be maintained at a central location, the regional office of EPA
- The Administrative Record must be made available to the public no later than 60 days after initiation of activity at the site and the Agency must inform the public that it is available for public inspection by placing a notice in a major local newspaper
- No public comment period on the Administrative Record is required for emergency removal actions with on-site activity lasting less than 30 days.

For time-critical removal actions, including emergency actions lasting more than 30 days, the following requirements apply:

- The Administrative Record file must be maintained at the regional office and at or near the site at issue
- The Administrative Record file must be made available to the public no later than 60 days after the initiation of activity at the site and a public comment period of at least 30 days must be initiated
- The Agency must inform the public that the Administrative Record is available for public inspection by placing a notice in a major local newspaper

- A responsiveness summary on the significant comments received must be prepared, as described below, following the public comment period.

The following requirements apply to non-time-critical removal actions:

- The Administrative Record file must be maintained at the Regional office and at or near the site at issue
- The Administrative Record file must be available for public inspection when the EE/CA approval memorandum is signed
- When the EE/CA is completed, it must be placed in the Administrative Record and a public comment period of at least 30 days must be initiated
- The Agency must place a notice in a major local newspaper that summaizes major provisions of the EE/CA and that informs the public of the start of the public comment period
- All documentation of the selection of the removal action must be in the file (i.e., the file is "closed") when the Action Memorandum is signed
- A responsiveness summary, as described below, must be prepared following the public comment period.

The responsiveness summary, which is required following all public comment periods, serves two functions: first to provide EPA with information about the views of the community and potentially responsible parties regarding the proposed removal action and any alternatives. Second, it documents how public comments have been considered during the decision-making process and provides answers to major comments raised. The responsiveness summary should be a concise and complete summary of significant public comments and the Agency's response to those comments. It should include references to all significant comments, criticisms and new data received and the Agency's position on each issue; it should not be a point-by-point recitation of each comment. Additional guidance on responsiveness summaries is provided in the Community Relations Handbook (October 1987).

7. State Role

Under section 300.24 of the NCP, each State governor is requested to assign an office or agency to represent the State on the appropriate RRT. This representative may participate fully in all RRT activities. In addition the State is encouraged to:

- Designate the element of the State government that will direct State-supervised response operations

EXHIBIT III-3
PROPOSED COMMUNITY RELATIONS AND ADMINISTRATIVE RECORD REQUIREMENTS FOR REMOVALS

ACTIVITY	EMERGENCY[1] Where on-site activity lasts less than 30 days	TIME-CRITICAL[2] Where on-site activity lasts less than 120 days	TIME-CRITICAL[2] Where on-site activity lasts more than 120 days	NON-TIME-CRITICAL[3]
Designate spokesperson	X	X	X	X
Notify affected citizens	X	X	X	X
Establish Administrative Record (AR) file	X	X	X	X
Make AR available when EE/CA approval memorandum is signed				X
Make AR available within 60 days of initiation of site activity	X	X	X	
Place AR in central location	X	X	X	X
Place AR at or near facility		X	X	X
Notify public of AR	X	X	X	X
Provide a 30 day comment period from date AR is available		X	X	X
Prepare Responsiveness Summary		X	X	X
Conduct community interviews			X	X
Prepare Community Relations Plan			X	X

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[1] Emergencies generally refer to those actions where the release requires that on-site activities be initiated within hours of the lead agency's determination that a removal action is appropriate.

[2] Removals where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a period of less than six months available before on-site activities must be initiated.

[3] Removals where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of more than six months available before on-site activities must begin.

- Include contingency planning for responses, consistent with the NCP and Regional Contingency Plans, in all emergency and disaster planning
- Use State authorities to compel potentially responsible parties to undertake response actions or to undertake response actions themselves, including those actions that are not eligible for Federal funding.

Since State and local public safety organizations often are the first government representatives at the scene of a release, they are expected to:

- Initiate public safety measures to protect public health and welfare
- Direct evacuations pursuant to existing State/local procedures.

Furthermore, States may enter into Superfund State contracts or CAs pursuant to 104(c)(3) and (d) of CERCLA, as amended by SARA, to undertake Fund-financed response actions when the Federal government determines that the State has the capability. A State agency acting under such an agreement is referred to as the "lead agency." Additional information on Cooperative Agreements and the use of Superfund State Contracts is provided in Section D.4 of this Chapter.

8. Roles of Other Federal Agencies at Non-Federal Facilities

Section 300.23 of the NCP defines the participation of Federal agencies other than EPA. These roles and responsibilities are summarized in Exhibit III-4, following this page. Three agencies, the USCG, ATSDR, and FEMA, have special responsibilities at non-Federal facilities.

EPA has negotiated MOUs with three Federal agencies: USCG, ATSDR and FEMA. Each Memorandum of Understanding (MOU) sets forth the role each agency will play in CERCLA-financed removal actions and outlines the administrative procedures for participation and compensation of those agencies. These MOUs are summarized in Appendix 14 of this manual.

The OSC is responsible for identifying whether technical assistance is needed from another agency and for making arrangements for that assistance. In addition, OSCs are responsible for initiating and processing any site-specific interagency agreements necessary for reimbursing Federal agency participation.

For agencies that have executed an MOU with EPA, OSCs should implement the administrative procedures set forth in the MOU. In other cases, OSCs should be aware that there are generally two mechanisms for funding the response-related activities of Federal agencies: the agency's Superfund budget and an interagency agreement. The nature of the agency's involvement will determine the compensation mechanism. For example, if the service provided is defined as an "ongoing" activity for which the other agency has received a Superfund budget, no further transfer of funds will occur. However, if the service involves site-specific response actions, the agency typically will receive reimbursement through an IAG. Procedures for using IAGs are set forth in III.D.3.

9. Requirements for Recordkeeping

OSCs must comply with a number of mandatory statutory requirements prescribed by CERCLA and the NCP. Because the Agency may, at any time, be required to prove compliance with these requirements and binding contractual arrangements, the OSCs must ensure that they document and record all decisions and determinations they make prior to and during responses. In addition, section 113(k) of CERCLA, as amended, requires that an Administrative Record be established that consists of information the Agency considered or relied on in making its decision on the selection of removal action. The Administrative Record must be made available to the public at or near the site at issue and is a subset of information included in the site file. Procedures for establishing and maintaining the Administrative Record are contained in Section F.6.b of this chapter.

Site and Regional files plus the Administrative Record are the main repositories for site records and original documentation. Care must be taken to ensure their completeness and long-term security. Selection of removal action, site management and financial management records are critical when cost recovery on other litigation is involved. The Agency may be required to furnish cost information or prove that actions undertaken during the course of response were consistent with NCP requirements. Complete and precise OSC records of oral and written communication with the responsible party, contractors and participating Federal, State and local agencies must be maintained should litigation arise at some later time.

a. Pre-Removal Records

Prior to the initiation of a removal response, the OSC must maintain documentation regarding decisions and determinations relating to issues such as:

- The appropriateness of removal response
- The possible need for remedial response
- Findings and recommendations of 104(b) studies (e.g., ATSDR health advisories, FEMA determinations regarding temporary relocation)
- Contact with the responsible party
- Planning of response actions

EXHIBIT III-4

Roles of Other Federal Agencies at Non-Federal Facilities

AGENCY	DESCRIPTION OF ROLES AND RESPONSIBILITIES
Department of Agriculture (USDA)	• Provides expertise in managing agricultural, forest, and wilderness areas; Soil Conservation Service (SCS) of USDA provides to the OSC/RPM predictions of the effects of pollutants on soil and their movements over and through soil.
Department of Commerce (DOC) through the National Oceanographic and Atmospheric Administration (NOAA)	• NOAA provides scientific expertise on living marine resources, for which it is responsible, and their habitats, including endangered species and marine mammals; coordinates scientific support for responses and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of discharged oil and released hazardous substances through trajectory modeling, and information on the sensitivity of coastal environments to oil discharges; provides information on actual and predicted meteorological, hydrologic, ice, and oceanographic conditions for marine, coastal, and inland waters; furnishes charts and maps, including tide and circulation information for coastal and territorial waters and for the Great Lakes.
Department of Defense (DOD)	• Consistent with its operational requirements, may provide assistance to other Federal agencies on request. • The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administration services for other Federal agencies.

EXHIBIT III-4(2)

AGENCY	DESCRIPTION OF ROLES AND RESPONSIBILITIES
DOD (continued)	. The United States Navy (USN), as a result of its mission and Publ. L. 80-513 (Salvage Act), is the Federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open sea pollution incidents. Also, upon request of the OSC, locally deployed USN oil spill equipment may be provided. This equipment is available on a reimbursable basis to Federal agencies upon request when commercial equipment is not available.
Department of Energy (DOE)	. Provides advice to the OSCs/RPMs when assistance is required in identifying the source and extent of radioactive releases, and in the removal and disposal of radioactive contamination.
Department of Health and Human Services (HHS)	. Provides assistance on all matters relating to assessment of health hazards at a response and protection of both response workers' and the public's health.
Federal Emergency Management Agency (FEMA)	. Will provide advice and assistance to the OSC/RPM on coordinating civil emergency planning and mitigation efforts with other Executive agencies, State and local governments, and the private sector. In the event of a major disaster declaration or emergency determination by the President at a hazardous materials response site, FEMA will coordinate all disaster or emergency actions with the OSC/RPM.

EXHIBIT III-4(3)

AGENCY	DESCRIPTION OF ROLES AND RESPONSIBILITIES
Department of the Interior (DOI)	. DOI should be contacted through Regional Environmental Officers (REO), who are the designated members of RRTs. . Department land managers have jurisdiction over the National Park System, National Wildlife Refuges and Fish Hatcheries, public land, and certain water projects in western states. . In addition, bureaus and offices have relevant expertise as follows: – Fish and Wildlife Service: fish and wildlife, including endangered and threatened species, migratory birds, certain marine mammals; habitats, resource contaminants; laboratory research facilities. – Geological Survey: geology, hydrology (ground water and surface), and natural hazards. – Bureau of Land Management: minerals, soils, vegetation, wildlife, habitat, archaeology, wilderness, hazardous materials. – Minerals Management Service: manned facilities for Outer Continental Shelf (OCS) oversight. – Bureau of Mines: analysis and identification of inorganic hazardous substances. – Office of Surface Mining: coal mine wastes, land reclamation. – National Park Service: biological and general natural resources expert personnel at Park units.

EXHIBIT III-4(4)

AGENCY	DESCRIPTION OF ROLES AND RESPONSIBILITIES
DOI (continued)	- Bureau of Reclamation: operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs. - Bureau of Indian Affairs: coordination of activities affecting Indian lands. - Office of Territorial Affairs: assistance in implementing NCP in American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.
Department of Justice (DOJ)	. Can provide expert advice on complicated legal questions arising from discharges or releases and Federal agency responses. In addition, the DOJ represents the Federal government in litigation.
Department of Labor (DOL) through the Occupational Safety and Health Administration (OSHA)	. Provides the OSC/RPM with advice, guidance, and assistance regarding hazards to persons involved in removal or control of oil discharges and hazardous substance releases, and in the precautions necessary to prevent hazards to their health and safety. OSHA and the States operating OSHA-approved State plans have the responsibility for assuring employee safety and health at response activities under this Plan. In cooperation with EPA and the NRT, OSHA has established a policy for handling occupational safety and health problems that may arise. This policy specifies that on request, OSHA will provide technical assistance to EPA, any other lead agency or the contractor. Technical assistance may include review of site safety plans, review of site work practices, assistance with exposure monitoring, and help with other questions that arise about compliance with OSHA standards. OSHA is also ready to respond to inspection requests from EPA or another lead agency, and will act if there are accidents or employee complaints

AGENCY	DESCRIPTION OF ROLES AND RESPONSIBILITIES
DOL (continued)	about unsafe or unhealthful work conditions at response activities under this Plan, as it does in other industries. OSHA reserves the right to take other actions necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at response sites should be referred to the OSHA Regional Office.
Department of Transportation (DOT)	. Provides expertise on all modes of transporting oil and hazardous substances. . The United States Coast Guard (USCG) offers expertise in domestic/international fields of port safety and security, maritime law enforcement, ship navigation and construction, and manning, operation, and safety of vessels and marine facilities. The USCG also maintains continuously manned facilities that can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG provides predesignated OSCs for the coastal zone. . In accordance with Executive Order 12580, the USCG is authorized to respond to certain releases or threatened releases involving the coastal zone, Great Lakes Water, ports and harbors. Additionally, E.O. 12580 and §300.32 of the NCP require that the USCG provide a representative to the NRT who shall serve as the Vice Chairman except during periods where the NRT is activated for response actions. When the NRT is activated, the USCG representative will serve as Chairman if the discharge or release occurs in the coastal zone areas.

EXHIBIT III-4(6)

AGENCY	DESCRIPTION OF ROLES AND RESPONSIBILITIES
DOT (continued)	• Through the Research and Special Programs Administration (RSPA), DOT offers expertise in the requirements for packaging, handling and transporting regulated hazardous materials.
Department of State (DOS)	• Will lead in the development of joint international contingency plans. Helps to coordinate international responses when discharges or releases cross international boundaries or involve foreign flag vessels. Will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

- Developing contractual arrangements
- Compliance with applicable or relevant and appropriate environmental statutes.

b. Removal Response Records

During the course of a Fund-financed removal, the OSC is responsible for generating and maintaining site-specific documents such as action memoranda and daily and periodic cost control reports. It is critical in emergency situations that the OSC maintain a log of on-site activities and record all communications with the contractor and participating Federal, State and local agencies. The Removal Cost Management Manual outlines the OSC's cost control recordkeeping responsibilities. The ERCS Contract User's Manual and the TAT Contract User's Manual prescribe guidance for contractor-related recordkeeping. Any necessary cost control recordkeeping requirements in conjunction with Federal, State and local agencies may be prescribed in an MOU, IAG procedures (Federal Agencies), CA or Superfund State Contract.

G. RESPONSE REPORTING

The OSC is responsible for documenting and reporting all response activities taken at a site. Reporting requirements include preparing and submitting to ERD a series of POLREPs and a final OSC report. POLREPs consist of initial, progress, special and final reports. Preparation of incremental POLREPs is no longer required. This section provides guidance on when the various reports should be submitted and the type of information each report should contain. Sample POLREPs are provided in Appendix 15.

1. POLREPs

POLREPs provide factual operational data surrounding the incident and a current accounting of the total funds allocated in an incident. POLREPs should also detail measures to ensure that the affected community is properly and fully informed of all response activities, in accordance with community relations requirements referenced in Section III.F.6 of this chapter. The Regions should bear in mind that POLREPs are a method of alerting HQ that critical events may be pending and that requests/action are about to be initiated. However, all requests for HQ decisions must be formally submitted in accordance with Section C of this chapter. To properly assist HQ management, routine POLREPs are sent to ERD at (202) 755-2155 (telefax, Dex 4100), 710-822-9269 (TWX)*, 892786 (TELEX for USCG POLREPs) or E-Mail and should contain the following pertinent information:

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* ERD has made available to EPA response personnel the use of Western Union's Datagram Service, which allows POLREPs to be sent from any phone to designated TWX equipment. Datagram access codes and instructions have been provided to all Regions.

a. Initial POLREPs

The OSC should prepare and send to HQ an initial POLREP on each new removal action. This report should describe the incident (including the outcome of the preliminary assessment); indicate whether the removal has been requested or approved by the RA; give the status of actions (including enforcement); describe the next step(s); and indicate when a signed Action Memorandum will be transmitted to HQ.

b. Progress POLREPs

Routine progress reports should be submitted to ERD a minimum of once every week for sites, and daily where practicable for classic spills. Progress POLREPs should identify the following:

- Situation — Present status of ongoing response activities
- Actions Taken — Activities undertaken since last POLREP
- Next Steps — Planned actions by the OSC
- Project Costs — Estimate of funds obligated thus far, (including a breakdown of cost categories as shown in Appendix 15) and anticipated future funding needed
- Any other pertinent information such as status of efforts to obtain cleanup by responsible parties.

c. Special POLREPs

POLREPs should be provided to ERD on inland and coastal incidents of interest even where no Fund-financed removal was taken by EPA (e.g., 311(k), UST). Also, POLREPs should be provided to ERD on all major unanticipated developments of interest at approved removal actions, (e.g., fires, explosions, and all accidents even if no damage or injury has been caused) not covered by other progress reports. In addition to reporting accidents to ERD via POLREP, a removal action accident report (see Appendix 16) should also be completed and submitted to ERD. This form was developed to provide more detailed documentation of circumstances surrounding accidents during the course of removal actions.

d. Final POLREPs

When a removal action has been completed, a final POLREP (e.g., POLREP #15 AND FINAL) should be submitted that describes the final actions taken at the release, results achieved, detailed final costs and dates of completion and demobilization.

2. Final OSC Reports

Within 60 days after the conclusion of a removal action, the OSC must prepare and submit to the RRT and NRT a final OSC report. The OSC shall, at the same time, submit a copy of the report to ERD. It is necessary that ERD have these final OSC reports on hand to respond to inquiries from the public, Congress, Office of the Inspector General and the General Accounting Office.

The final OSC report is a complete report on the response operation and the action taken. It should include a summary of events, an analysis of the effectiveness of removal actions, a list of problems affecting the response, if applicable, and OSC recommendations. Details on the format of the report can be found in section 300.40 of the NCP.

H. CLOSING OUT PROJECTS

All completed projects must follow closeout procedures. These procedures include preparing and submitting the final OSC report, completing all contract management requirements (e.g., certification of invoices, receipt of off-site disposal report), conducting cost calculations for planned removals initiated prior to the 1985 revision of the NCP (see Appendix 17), and ensuring appropriate operation and maintenance arrangements with the State, as necessary. Below is a brief summary of the requirements and procedures.

1. Definition of Action Completion

At the conclusion of the removal action, the OSC must determine when the project is complete. The completion date signifies that all approved actions have been completed and that the removal action has abated or mitigated the threats that prompted the action. Completion dates should be twelve months or less from the date of initial response, unless the OSC has obtained an exemption in accordance with the provisions of section 104(c)(1) of CERCLA, as amended, and the procedures in Section E.2 of this Chapter.

For purposes of tracking the twelve-month limit, the completion date is defined as the date on which all approved response actions are completed and the contractor and OSC have completely demobilized. As noted previously in Section E.2 of this chapter, temporary demobilization and temporary storage onsite are not considered completions, unless temporary storage is the only action identified in the Action Memorandum to mitigate threats to public health, welfare and the environment. Likewise, temporary off-site storage of hazardous substances at a treatment, storage, and disposal (TSD) facility other than the facility of ultimate disposal is a continuation of the removal action, not a completion.

In limited situations, a completed removal action at an NPL site may effectively remedy all threats at the site, without implementing remedial action, thus rendering the site eligible for deletion from the NPL. HSCD is currently developing procedures for closing out projects and deleting sites from the NPL under these situations.

2. Post Removal Site Control

CERCLA section 104(c), as amended, places a twelve-month limit on removal actions and provides stringent criteria for extending the limitation. Unless these criteria are met, the State or local government must assume responsibility for post removal site control (PRSC) costs no later than twelve months after the removal begins. Examples of PRSC at a removal include running pumps and operating a ventilation system.

If the OSC knows that PRSC will be necessary after the removal action is completed, the OSC should obtain an agreement from the State (e.g., a letter agreement or MOU) for State or local assumption of responsibility for PRSC costs prior to initiating the removal. If such an agreement cannot be obtained, the OSC should avoid recommending any removal option that involves continuing PRSC where other options exist that may be implemented at once.

Some situations may require PRSC as part of all removal options. If no State or local government agrees to assume responsibility for PRSC costs, the OSC will be required to justify to the RA any continuation of funding from Superfund beyond the twelve-month limit. Such a justification must meet one of the two statutory exemptions to exceed the twelve-month statutory limits, otherwise, funding for the removal will be terminated.

IV. SPECIAL CIRCUMSTANCES

Chapter IV sets forth the supplemental procedures and technical criteria that OSCs must follow in a variety of special complex cases. The procedures discussed in this chapter are in addition to the general operational procedures described in Chapter III, Program Operations.

IV. SPECIAL CIRCUMSTANCES

Chapter III described the general operational procedures that apply to all releases under consideration for Fund-financed removal action. In addition to those procedures, EPA has issued policies that establish supplemental procedures, as well as technical criteria, that the OSC must follow in a variety of special, complex cases such as those involving:

- Off-site storage, treatment and disposal
- Provision of alternate water supply
- Removals in floodplains/wetlands
- Responses on Native American lands
- Radioactive wastes
- Naturally occurring substances
- Evacuation and temporary relocation.

This Chapter summarizes these requirements and describes how they relate to the procedures discussed in Chapter III.

A. OFF-SITE STORAGE, TREATMENT AND DISPOSAL PROCEDURES

In order to ensure proper treatment and disposal of hazardous substances removed from CERCLA sites, section 300.65 of the NCP requires that all Fund-financed removal actions or removals under section 106 of CERCLA involving off-site transport of hazardous substances only use facilities operating under appropriate Federal or State permits or authorization. Under section 121(d)(3) of CERCLA, as amended, hazardous substances removed from CERCLA sites may only be transferred to facilities that are operating in compliance with RCRA, TSCA, and all applicable State requirements. In addition, CERCLA, as amended, precludes the use of disposal units that have releases of hazardous wastes or hazardous constituents, and of disposal facilities that have releases which have not been addressed by corrective action.

In 1985, OSWER developed an off-site disposal policy entitled "Procedures for Planning and Implementing Off-site Response Actions" (memorandum from AA, OSWER to RAs, May 6, 1985). This policy detailed how EPA would undertake Superfund response when these actions involved off-site management of hazardous substances. The Off-site Policy was revised in 1987 to incorporate the provisions in SARA for hazardous waste disposal. The Revised Off-site Policy is entitled "Revised Procedures for Implementing Off-site Response Actions" (OSWER directive #9834.11, November 13, 1987).

This section of the Superfund Removal Procedures manual defines the specific roles and responsibilities of OSCs, the criteria and procedures they should use to make and document off-site disposal decisions, and the activities they should undertake to ensure compliance with the Off-site Policy throughout the response action. The Off-site Policy requirements are explained in greater detail in this section, and include:

- Selection of an off-site option
- Selection of an off-site facility
    - Permit status
    - Acceptability status
- Additional requirements for PCB, dioxin, and land disposal
- Waivers
- Recordkeeping, manifests, and reporting requirements.

Throughout each of these processes, the OSC should coordinate closely with RCRA personnel (and TSCA personnel when appropriate) and the State as appropriate. This coordination is necessary because the Regional RCRA Off-site Coordinator (RROC) is responsible for tracking the acceptability status of commercial facilities. In addition, States are responsible for obtaining other permits and, should States have RCRA authorization, they may have additional disposal requirements.

1. Off-Site Policy Requirements

The Revised Off-site Policy includes the following key requirements, which are consistent with the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act:

- Preference for and mandatory consideration of treatment, recycling, and reuse over land disposal
- Facilities under consideration for off-site storage, treatment, or disposing of wastes from any response action under CERCLA, section 7003 of RCRA, section 311 of the Clean Water Act or any removal actions at Federal facilities under section 120 of CERCLA, as amended, must have a permit or interim status under RCRA or other applicable Federal or State law
- Facilities must have had a compliance inspection within six months prior to receiving wastes from a response action
- RCRA Subtitle C facilities where releases of hazardous wastes, hazardous constituents or hazardous substances have not been identified must have a RCRA Facility Assessment or equivalent investigation to determine if there are potential or existing releases of hazardous wastes or hazardous constituents from solid water management units
- Where land disposal is used at a RCRA facility, the RCRA minimum technology requirements of §3004(o) must be met

- A manifest that is in compliance with RCRA for the transportation of hazardous wastes is obtained

- PCB and dioxin disposal requirements must be met.

For removal and remedial actions, compliance with the Revised Off-site Policy is mandatory except in cases where the OSC or other appropriate Regional official determines that the exigencies of the situation do not allow for full compliance without endangering public health, welfare or the environment. In such cases, OSCs should contact ERD's Response Operations Branch for guidance on determining if site conditions meet this exemption and should consider temporary solutions (e.g., interim storage) to allow time to locate an acceptable facility and to secure the wastes off-site during the evaluation of permanent disposal options. In accordance with the Revised Off-site Policy, OSCs must provide the RA (or the RA's designee) with a written explanation of his/her decision to use the emergency exemption within 60 days of taking the action.

2. Selection of an Off-Site Option

In designing the response action and estimating a total project cost, the OSC must determine the need to transport hazardous substances off site and must select the most suitable type of storage, treatment, or disposal. Historically, land disposal has been the method of choice because of its lower cost. The Off-site Policy states that, for Fund-financed removals in response to immediate and significant threats, treatment, reuse, or recycling must be considered, unless the OSC determines that treatment, reuse, or recycling are not reasonably available given the exigencies of the situation and that interim storage is not feasible, or that these methods pose a significant environmental hazard.

As time permits in a removal situation, OSCs should conduct a proportionally more detailed comparison of all technically feasible disposal options prior to drafting and obtaining approval of the removal action. This comparison and recommendation should be fully discussed in the removal Action Memorandum (or subsequent removal action documentation, as more information becomes available). Factors the OSC should consider in this analysis include, but are not limited to:

- Type(s) of hazardous substances or pollutants or contaminants -- Hazardous substances or pollutants or contaminants may be compatible or incompatible, affecting their preparation for off-site transport as well as the available types of treatment or storage (e.g., PCB storage has specific requirements).

- Hazardous substance or pollutant or contaminant quantities -- The amount of hazardous substances or pollutants or contaminants to be disposed of limits options based on available facilities and transportation needs.

- Transportation -- The distance and method of transport to the treatment/disposal facility affects cost as well as the potential safety of population and environment along the transport route.

- Cost -- As with other response activities, cost should be reasonable; EPA policy, however, is that response personnel should not simply select the least costly off-site option. Rather, cost must be balanced against the threat involved and the Agency's preference for alternatives to land disposal.

- Potential for threat to public health -- Disposal of Superfund hazardous substances or pollutants or contaminants in landfills has the potential to simply transfer the threat to health and the environment to another location. OSWER's Off-site Policy is designed to prevent this transfer and to ensure a net benefit to the public health and environment by seeking alternatives to landfilling.

Based on this analysis, the OSC should make a preliminary determination of the need for off-site disposal and the preferred off-site disposal option. More detailed information on this analysis will be presented in OSWER guidance on Engineering Evaluations and Cost Analyses (EE/CAs) now under development. Procedures for documenting this decision are detailed in Section A.5, Recordkeeping, Manifests, and Reporting Requirements, of this Chapter.

3. Selection of an Off-Site Facility

Once the OSC has ascertained the need for off-site transport of wastes and has made a preliminary determination of the most appropriate off-site option, the next step is to locate an acceptable facility and unit within the facility that will receive the wastes in a timely manner. The OSC should coordinate with the Regional RCRA staff when deciding to dispose of materials off site. The RROC is the focal point of implementing the Off-site Policy. CERCLA personnel making disposal decisions must request facility eligibility status information from the RROC by phone for the most current status information. The Off-site Policy requires that facilities meet specific criteria in order to receive Superfund wastes.

a. Permit Status

The OSC first must determine that the candidate facility has RCRA interim status or a Part B permit to receive the specific type* and quantity of waste to be removed from the site. The OSC should obtain permit status information during his or her initial contact with the RROC. Headquarters plans to make available a copy of each Region's quarterly off-site facility updates for use in planning and procurement. OSCs may call the RROC staff to get current facility-specific status.

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* Not all CERCLA hazardous substances are hazardous wastes under RCRA. Therefore, it is possible that a particular facility permit may not cover a hazardous substance that must be disposed of. Moreover, in some situations, a hazardous substance under CERCLA may trigger disposal requirements under other laws (for example, TSCA for PCBs and the Uranium Mill Tailings Radiation Control Act for some radioactive substances). In such cases, applicable requirements, including State requirements, must be observed.

b. Acceptability Status

If the candidate facility has appropriate permit status, the OSC must next confirm its acceptability status with the RROC. The responsible government official in the Region or the State in which the hazardous waste facility is located determines whether the facility is acceptable for hazardous waste disposal or has relevant violations or releases that may preclude its use for off-site transfer of CERCLA wastes. The Revised Off-site Policy requires that facilities designated to receive CERCLA wastes must be inspected to determine compliance status and to identify any existing and potential releases from the facility within six months of the planned receipt of the waste. In addition, land disposal facilities must have received a comprehensive ground-water monitoring inspection or an operation and maintenance inspection within the last year.

If the appropriate inspections were conducted, the OSC must verify through the RROC that the facility has no relevant violations or that relevant violations have been corrected. The RROC determines and maintains information on the acceptability status of hazardous waste facilities. The RROC verifies for each facility that the appropriate inspections have been completed and that there are no relevant releases, conditions or violations that would make the facility unacceptable. If an inspection is scheduled, but delay would pose a substantial public health or environmental threat, or if an inspection has not yet been scheduled, the OSC should attempt to identify cost-effective alternative facilities that are in compliance. To obtain this information, the OSC should consult with the RROC who will confirm facility acceptability. RROCs should maintain a working list of applicable facilities currently in compliance that could be used in emergency situations.

If none of the candidate facilities has had the appropriate compliance inspection or is scheduled to have one within the time frame of the response and if sufficient time is available, the OSC may request that the Regional RCRA staff arrange for contractor support (TES, FIT, or TAT) to conduct one. The EPA Regional Contract Project Officer would direct the inspection with support from Regional RCRA personnel. Using data collected from the on-site inspection, EPA staff will make the final determination regarding facility acceptability. OWPE is currently developing guidance on the conduct of facility compliance inspections.

Facilities found to be in non-compliance have 60 days in which to demonstrate compliance or request a reconsideration of the determination before they are precluded from accepting Superfund wastes. After the 60 days, staff may permit use of such a facility when: 1) the facility is under a consent agreement or decree to correct the release, and/or 2) disposal of the CERCLA wastes will occur in a unit that is in compliance with RCRA and will not contribute to adverse conditions at the facility.

c. Use of Department of Defense Facilities

OSWER has developed a draft outline of guidance to the Regions on procedures for obtaining access to DOD facilities to store, treat or dispose of non-DOD-owned explosives or other hazardous substances (memorandum from Director, ERD to NRT Representatives, October 20, 1986). OSCs should examine all available options prior to requesting the use of DOD property, since the circumstances under which DOD property may be used to store, treat or dispose of non-DOD owned explosives or other hazardous substances are limited. If the OSC determines that other alternatives are not satisfactory, the OSC should contact ERD/HQ regarding the need to use a DOD facility. ERD will then forward the request to OERR, who transmits the request to DOD.

4. Additional Requirements for PCB, Dioxin, and Land Disposal

Wastes containing PCBs and/or dioxins are hazardous and require special treatment prior to land disposal. If a candidate off-site facility does not have such treatment capacity or technology, alternative facilities should be considered. Regulations for the treatment, storage and disposal of these hazardous wastes are described below.

a. Land Disposal Requirements

The Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act imposed strict requirements on the treatment and disposal of hazardous wastes. In November 1986, EPA promulgated the first set of land disposal restrictions (LDR) for certain solvent and dioxin wastes. The effective date of these regulations for Superfund response action wastes, however, was extended until November 1988. On July 8, 1987, EPA published the second set of LDR regulations, which define and set treatment standards for the wastes on the "California list." The California list wastes include liquid and non-liquid wastes containing halogenated organic compounds (HOCs) and liquid wastes contained PCBs, acid corrosives, free cyanides and certain metals. As of July 8, 1987, land disposal prohibitions took effect for Superfund for the following California list wastes: dilute HOC wastewaters, PCBs, corrosives, free cyanides and metals. An extension of the effective date has been granted for the remaining HOC wastes.

Additional land disposal restrictions for all other characteristic and listed RCRA hazardous wastes are scheduled to be issued in August 1988, June 1989 and May 1990. A memorandum from the Director, OERR (August 11, 1987) provides a summary of major LDR provisions and California list prohibitions. OSCs should refer to this memorandum for more detailed information on the RCRA land disposal restrictions.

In addition to establishing waste treatment standards, RCRA 3008(o) requires that all new landfills or surface impoundment units and lateral extensions of or replacements for existing units of interim status landfill or surface impoundment units must have at least two liners and a leachate collection system above, and in the case of landfills, between the liners. RCRA permit and interim status facilities must have an adequate ground-water monitoring system and demonstrate that the facility poses no threat to ground water. The RCRA compliance inspection, discussed above, will verify these requirements so that OSCs need not conduct an independent assessment.

b. PCB Disposal Requirements

OSCs shall ensure that PCB disposal requirements for selecting off-site management options are followed in accordance with 40 CFR 761.60. Liquid hazardous wastes that at any time contained PCBs at concentrations greater than or equal to 50 ppm are prohibited from land disposal unless 1) they are treated in accordance with 40 CFR 268.42, 2) are subject of a successful "no migration" petition under 40 CFR 268.6, or 3) are granted a case-by-case extension or national capacity variance.

c. Dioxin Disposal Requirements

Removals involving dioxin-containing wastes are of national significance and require concurrence by the AA, OSWER and the HQ Dioxin Disposal Advisory Group (DDAG). These types of removals must be performed in compliance with EPA's final dioxin listing (effective July 15, 1985) and by November 8, 1988, must comply with the "land ban," which is included in the land disposal restrictions regulation (40 CFR 268, July 8, 1987). Under section 300.65(f) of the NCP, OSCs are not required to obtain a permit for on-site treatment of dioxin-containing wastes. However, OSCs should use the technical requirements set forth in the final dioxin listing and the land ban for treating dioxin-containing wastes.

The final dioxin listing defines certain chlorinated dibenzo-p-dioxins, dibenzofurans and phenols as acute hazardous wastes and specifies treatment and disposal standards for these wastes. Waste management standards include operating regulations for all waste management facilities which handle listed wastes. The listing provides permitting criteria for tank and container storage facilities, land disposal facilities, and incinerators and thermal treatment facilities. In addition to establishing waste management procedures for dioxin-containing wastes, the final dioxin listing also sets forth requirements for treating the residues of hazardous waste in empty containers. Residues in containers that contain listed wastes are regulated under Subtitle C of RCRA unless the container has been triple-rinsed using a solvent capable of removing the waste, or the container has been otherwise cleaned by a method that has been shown to achieve equivalent removal. Additional guidance on treatment standards for hazardous waste residues is contained in 40 CFR 261.7.

The land disposal restrictions regulation prohibits further land disposal (except by deep well injection) of the dioxin-containing hazardous wastes identified as F020, F021, F022 and F023 in the final dioxin listing (40 CFR 261.31). When RCRA-listed dioxin-containing wastes are suspected at a removal site, emergency removal actions may be warranted per an ATSDR health advisory that states the appropriate action level site-specifically.

Dioxin-containing hazardous wastes must be disposed of at waste management facilities that are fully in compliance with RCRA requirements for treating, storing or disposing of these wastes. Between November 8, 1986 and November 8, 1988, these wastes may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in 40 CFR 268.5(h)(2) and special requirements for dioxin wastes under 40 CFR 264.B17. In emergency situations, if disposal at a full compliance facility is not possible, wastes may be temporarily drummed and stored on site.

When developing site-specific response plans, OSCs should contact the Regional Dioxin Coordinator (if one has been assigned) and the DDAG to: 1) identify authorized facilities and 2) obtain required technical assistance. The DDAG issues guidance and provides technical assistance in determining appropriate response options for interim storage and/or off-site disposal.

5. Recordkeeping, Manifests, and Reporting

The Action Memorandum approving the removal should be as specific as possible about the need for off-site disposal and the disposal option and facility selected. In many cases, however, the OSC may not know the amount or type of waste requiring off-site treatment or disposal until on-site action begins. In such cases, the Action Memorandum should state the OSC's intent to comply with all requirements of the Off-site Policy. Once the OSC has identified the hazardous substances, estimated the amount of each waste type and selected the disposal option, he/she should report this information in a POLREP to Headquarters. In addition to documenting the decision in an Action Memorandum or POLREP, the OSC should include in the site file any documentation of the Regional RCRA staff's determination that the facility selected is in compliance with RCRA.

OSCs are responsible for ensuring that off-site transport of the wastes is in compliance with RCRA requirements and DOT requirements in 49 CFR 171. They must ensure that the Uniform Hazardous Waste Manifest is completed correctly in compliance with 40 CFR 262 and accompanies the waste. In addition, OSCs must ensure that when contractors complete the manifest, it is properly filed. Finally, response personnel also must ensure that the transporter gives proper notification under section 3001 of RCRA. OSCs are required to send to the RROC a copy of the first and last manifest completed for shipment to a given facility.

Modifications and amendments have been made to Cooperative Agreements, ERCS, TAT, REM, FIT, and TES contracts, and Interagency Agreements relating to the Off-site Policy. These require that all contractors and assistance recipients be cognizant of the Off-site Policy requirements, comply with these requirements, track and maintain records of CERCLA waste management, and describe and certify in all final reports the means by which the requirements were followed. These requirements also will be specified in all delivery orders or work orders.

B. PROVISION OF ALTERNATE WATER SUPPLY

Contamination of drinking water is one of the many types of threats the removal program is designed to address. Response actions typically consist of provision of bottled water and/or replacement of individual wells with municipal service (e.g., installation of water lines). Longer term responses such as aquifer restoration generally fall under remedial action.

Procedures for assessing releases that threaten drinking water, determining the need for a Fund-financed removal and approving and initiating the removal are the same as for other releases and are described fully in Chapter III. The purpose of this Section is to provide OSCs with some supplemental technical guidance on how to evaluate the extent of the threat and select a specific response action. The guidance provided below originates from the guidance document entitled "Interim Final Guidance on Removal Action Levels at Contaminated Drinking Water Sites" (OSWER directive #9360.1-10, 10/6/87).

1. Action Level for Initiating a Removal Action

With regard to initiating a removal action, a site (NPL or non-NPL) may qualify for response if either: 1) the numeric action level is exceeded at the tap, or 2) site-specific factors otherwise indicate that a significant health threat exists. The action level for initiating a removal action should not be used as the cleanup standard for the contaminated water. Cleanup standards are discussed in Section B.2 of this Chapter.

a. Action Level Based on Numeric Trigger

The numeric action level for a particular contaminant will depend on whether the substance is also a potential human carcinogen and/or volatile. For purposes of this guidance, a substance is a carcinogen if it falls into categories A, B or C of EPA's carcinogen classification guidelines. Volatile organic chemicals (VOCs) are generally of low molecular weight, high vapor pressure, and low solubility. For additional information on the chemicals that comprise VOCs, OSCs should refer to the interim final guidance on drinking water action levels, noted above. The action levels for different types of contaminants are identified in the following decision model:

- Non-volatile non-carcinogens -- Action level equals the Drinking Water Equivalent Level (DWEL)

- Volatile non-carcinogens -- Action level equals 50 percent of the DWEL

- Non-volatile carcinogens -- Action level is determined by comparing the DWEL to the 10^{-4} Lifetime Upperbound Cancer Risk Level, and choosing the lower of the two

- Volatile carcinogens -- Action level is determined by comparing 50 percent of the DWEL to the 10^{-4} Lifetime Upperbound Cancer Risk Level, and choosing the lower of the two.

This model requires modification in two situations. The first is where the calculated action level is lower than or equal to the Maximum Contaminant Level (MCL) established under the Safe Drinking Water Act. The second is where the calculated action level is based on the DWEL, but the 10-day Health Advisory for that substance is lower than the DWEL. Refer to the interim final guidance for information on the appropriate procedures in these two situations.

b. Action Level Based on Site-Specific Factors

A significant health threat may exist even though the numeric action level has not been exceeded. A removal action may be initiated if the health risk at a site has been analyzed in detail and the analysis indicates that a serious health risk is present due to site-specific factors. Examples of such factors include the presence of sensitive members in the population, evidence that a contaminated ground-water plume is moving, evidence that contaminant levels will increase (e.g., increased pumping from an aquifer anticipated during summer months), the presence of additive effects resulting from multiple contaminants, or the presence of non-carcinogenic substances above the reference dose (RfD). When such conditions are present, the site may qualify for removal action even though the numeric indicator has not been exceeded. Decisions will be made on a case-by-case basis. Headquarters concurrence must be obtained before approving Action Memoranda that are based on site-specific factors, even where the action will not exceed the statutory removal limits.

c. Obtaining an Exemption to the Statutory Limits

To obtain an exemption to the $2 million/12 month limits on removal actions based on a continuing emergency, it will generally not be adequate to show that contaminant levels exceed the numeric action level by some minimal amount. An exemption may be justified if contaminant levels exceed the 10-Day Health Advisory, significantly exceed the numeric action level, or an emergency exists based on site-specific factors. A finding that contaminant levels exceed the numeric action level by a minimal amount may be appropriate, however, in "non-emergency" situations where an exemption is based on the new consistency waiver.

2. Implementing the Removal/Action -- Cleanup Standards

With regard to selecting a removal action to clean up a drinking water contamination site, under EPA's policy on compliance with other environmental statutes and regulations, the OSC should consider all applicable and relevant Federal and promulgated State standards, criteria, guidelines and advisories, where practicable. EPA is currently developing guidance on compliance with the SDWA and CWA. OSCs should consider the following standards, criteria, and guidance for cleaning up drinking water contamination sites:

- The Safe Drinking Water Act (SDWA) - Under SDWA, EPA has set Maximum Contaminant Levels (MCLs) for contaminants in finished drinking water provided by public water supply systems serving 25 or more people or having 15 or more service connections. As of September 1986, EPA had set MCLs for 26 contaminants: two microbiological contaminants, four radionuclides, 10 organic chemicals and 10 inorganic chemicals. EPA has also set parameters for turbidity, total dissolved solids and pH and has established Maximum Contaminant Level Goals (MCLGs) for each MCL. OSCs should consider MCLs when addressing ground-water contamination. However, cleanup goals more stringent than the MCL may be set considering the MCLG if the MCL is not adequately protective at the site due to site-specific circumstances. The Safe Drinking Water Act Amendments of 1986 (SDWAA) set mandatory deadlines for the regulation of additional key contaminants and require monitoring of other unregulated contaminants. SDWAA also establish benchmarks for treatment technologies and bolsters enforcement powers.

- The Clean Water Act (CWA) - Under the CWA, EPA has developed National Ambient Water Quality Criteria (NAWQC) to protect surface waters. The NAWQC provide guidelines for types and levels of chemical, physical and biological pollutants that affect the human and natural environment. They are not specific to drinking water, however.

- The Ground-Water Protection Strategy (G-WPS) - This Strategy establishes a policy framework for EPA programs that delineates three classes of ground water and suggests the extent to which each should be protected. The differing levels of protection are accorded to each class of ground water based on its use, value to society and vulnerability to contamination. For example, the cleanup requirements and protection strategy for current and potential sources of drinking water (Class I and II) exceed the objectives established for waters determined to be of limited beneficial use (Class III). EPA recommends cleanup of Class I and Class II waters to current drinking water standards or background levels that protect human health.

- State Water Quality Standards - Many States have established ambient water quality standards for surface water and various classifications of ground water; however, such standards are not necessarily specifically geared toward removal activities. State standards generally take into account human health and environmental considerations and may be more stringent than Federal standards. In addition, State water quality standards may exist for pollutants not presently covered at the Federal level.

- Agency for Toxic Substances and Disease Registry (ATSDR) Health Advice - CERCLA, as amended by SARA, greatly expands the role of the ATSDR in performing health assessments at Superfund sites as well as preparing lists of hazardous substances, performing health effects research and preparing toxicological profiles. The ATSDR continues to issue health advice on a case-by-case basis. The OSC may request health advice from ATSDR by contacting the Region's designated ATSDR or CDC representatives.

The Policy Analysis staff of OERR's Office of Program Management is currently developing a manual on compliance with the SDWA and CWA to be entitled CERCLA Compliance with Other Laws.

C. REMOVALS IN FLOODPLAINS/WETLANDS

Fund-financed removal actions should be consistent to the extent practicable with Federal policy and procedures for the protection of floodplains and wetlands. Thus, OSC decisions should take into account the provision of three primary Federal policy documents on the subject: Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Appendix A of 40 CFR Part 6, Procedures on Floodplain Management and Wetland Protection. OERR policy contained in an August 6, 1985 Memorandum from the Director, OERR to Regional Superfund Coordinators specifies how the above policies apply to Superfund responses.

Under the OERR policy, OSCs must undertake three specific actions. First, as part of the preliminary assessment, the OSC must determine whether the release is in, near or affecting a floodplain or wetland. Definitions of floodplains and wetlands are contained in the Executive Orders and Appendix A of 40 CFR Part 6. In general, floodplains are a temporary, partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters and/or the usual and rapid accumulation of runoff or drainage. Wetlands generally include, but are not limited to, swamps, marshes, bogs and similar areas such as sloughs, wet meadows, mud flats and natural ponds.

Once the OSC has determined that the release is in proximity to or has the potential to affect a floodplain or wetland, the remainder of the preliminary assessment should include an evaluation of the following factors:

- Possible impact of proposed response actions on the floodplain/wetland
- Alternate response actions (including the no-action alternative)

- Measures to minimize potential adverse impacts including, but not limited to, the following options:
  - Minimum use of grading
  - Protecting and maintaining the vegetation to reduce sedimentation
  - Regulating soil removal and filling to reduce sedimentation
  - Protecting topsoil
  - Raising the site above the floodplain/wetland
  - Returning the site to natural contours.

Second, the OSC must document the results of this evaluation in the Action Memorandum. Finally, the OSC must ensure that the implementation of approved response actions minimizes adverse impacts on the floodplain/wetland.

In making any of the determinations or in implementing appropriate response measures in floodplain/wetland areas, the OSC may wish to consult with other government officials who have appropriate expertise. These may include staff from EPA's Regional 404 Clean Water Program, the Federal Emergency Management Agency (FEMA), the U.S. Geological Survey (USGS), the U.S. Fish and Wildlife Service, and State and local agencies. Response personnel also should include, in community relations activities, any pertinent information regarding the potential impact of removal actions on affected floodplains/wetlands and any measures to be taken to minimize floodplain/wetland damage.

D. RESPONSES ON NATIVE AMERICAN LANDS

On Native American lands, OSCs should use the procedures outlined in Section III.C of this document to initiate removals for any releases that meet the NCP criteria. Pursuant to the current NCP, no cost-sharing is required for any removal responses on Native American lands.

E. RADIOACTIVE WASTES

When an OSC becomes aware of the release of a radioactive substance, his/her first steps should be to determine whether 1) EPA has authority to respond and 2) the release meets the removal criteria set forth in the NCP. Under CERCLA, EPA can respond to releases of radioactive wastes except those excluded by CERCLA section 101(22)(C), as amended by SARA, including:

- Release of source, by-product or special nuclear materials that are subject to the financial protection requirements of section 170 of the Atomic Energy Act

- Release of source, by-product or special nuclear materials from certain processing sites designated under sections 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act

and those excluded by CERCLA section 101(10)(K):

- Release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

To ascertain the existence of an emergency situation, OSCs will need to consult with the Office of Radiation Programs (ORP) in EPA and, through the RRT, with Nuclear Regulatory Commission (NRC) and Department of Energy (DOE) Regional staff. Through these consultations, OSCs can obtain guidance on how to conduct testing and monitoring and on whether the test results indicate that an emergency situation exists. OSCs should be aware, however, that the definition of "emergency" under the Atomic Energy Act differs from that under the NCP. The OSC must use the NCP definition and should seek assistance from the Removal Operations Branch in applying the NCP criteria.

OSCs should determine whether the release is from a facility with a previous or current NRC license. For releases from those facilities, EPA's policy is that the NRC should take responsibility. (NOTE: In accordance with Executive Order 12580, all Federal agencies have been delegated the responsibility for responding to non-emergency removal actions at Federal facilities under their jurisdiction; DOD and DOE also have the authority to respond to emergency removal actions at their own facilities.) However, OSCs may seek approval for a Fund-financed removal if they determine the NRC cannot issue a court order expeditiously or if the release is not from a previous or current NRC licensee. Section 300.22(g) of the NCP stipulates that, where appropriate, discharges of radioactive materials shall be handled pursuant to the Federal Emergency Radiological Plan (FERP) 49 FR 35896, November 8, 1985. Therefore, prior to undertaking response action, the OSC should consult with the ORP, to the extent practicable, to ensure the response takes place pursuant to the FERP. In undertaking response actions, OSCs should utilize the RRT to obtain technical advice on conducting the removal activities and may enter into an IAG with DOE or the NRC.

F. NATURALLY OCCURRING SUBSTANCES

In accordance with section 104(a)(3) of CERCLA, as amended, removal actions generally will not be authorized in situations involving a release, or threat of release, of a naturally occurring substance in its unaltered form, or one that is altered solely through natural processes or phenomena. CERCLA response may be authorized, however, provided two criteria are satisfied as set forth in CERCLA section 104(a)(4), as amended:

1) The release or threat of release constitutes a "public health or environmental emergency"

2) "No other person with the authority and capability to respond to the emergency will do so in a timely manner."

When a request is received for response where naturally occurring substances are suspected to be involved, the OSC should take the following steps in addition to the procedures discussed in Chapter III:

- The OSC should attempt to determine the source of contamination.

- If the source of contamination appears to be a naturally occurring substance, the OSC must ascertain that the threat represents a "public health or environmental emergency." In order to do so, the OSC should obtain support from ATSDR, ORP and State authorities. In addition, the OSC can contact the ERD Regional Coordinator to assist in identifying and arranging for the assistance of appropriate HQ staff.

- Once it has been determined that a public health or environmental emergency does exist or is imminent, the OSC must contact "other persons" (e.g., State and local authorities, PRPs) to determine their willingness or capability to respond to the threat. CERCLA response should be considered only after all other avenues of response have been exhausted.

- If this is a site of national significance, the OSC must get AA, OSWER approval in accordance with Delegation 14-1-A (Appendix 8).

- OSCs should document all analyses, determinations and response plans in the Action Memorandum and/or subsequent POLREPs.

In addition to these procedures, EPA has issued policy on conducting removals involving naturally occurring substances.

OSWER has issued policy in a January 23, 1986 memorandum from the Director, OERR to Regional Waste Management Division Directors on the appropriateness of removal actions at methane gas release sites. Naturally occurring methane gas found near or associated with petroleum deposits is a type of natural gas and is therefore exempt from CERCLA coverage. However, methane gas emanating from a landfill is not considered to be a "natural gas" and such releases may therefore be eligible for response under CERCLA section 104(a)(1), as amended, if methane gas otherwise meets the definition of pollutant or contaminant under section 104(a)(2)of CERCLA, as amended by SARA.

G. EVACUATION AND TEMPORARY RELOCATION PROCEDURES

In the event of a major disaster or an environmental or public health emergency, the OSC, in coordination with Federal, State and local authorities, may need to undertake immediate public safety measures deemed necessary to protect the health and welfare of local populations. The removal authority of CERCLA provides for two types of measures when the threat warrants removing local residents from the affected area:

- Evacuation refers to immediate and emergency efforts by State and local officials to remove residents from the affected area typically following a classic emergency (e.g., spill, fire or explosion).

- Emergency evacuations usually have a short duration (several hours to a few days) and continue until the immediate threat of exposure has subsided. Residents living on the site or in adjacent homes or an entire community may be evacuated when necessary.

- Temporary Relocation is the provision of temporary housing for populations at risk from a release of hazardous substances. The temporary relocation may be from a few days to several months, until the threat is eliminated or is reduced to safe levels so that individuals may return to their homes. Temporary relocations that will continue more than twelve months are subject to the twelve month statutory limitation and require the OSC to submit a twelve month exemption request.

Responsibilities and procedures regarding evacuations and temporary relocations are outlined below.

1. Evacuation

Pursuant to section 300.24(e) of the NCP, because State and local agencies are usually the first to respond to an emergency, these agencies have the authority to initiate and direct any public safety measures deemed necessary to protect public health and welfare. They are expected to direct evacuations pursuant to existing State and local procedures. Following the initial discovery of the release of a hazardous substance and prior to arrival of the OSC and the start of Fund-financed response, State and local authorities (police and fire) are responsible for coordinating all evacuation measures. Once Fund-financed response is underway, if a major emergency arises, the OSC should determine if evacuation is required and contact appropriate local authorities to initiate an evacuation.

2. Temporary Relocation

Executive Order 12580 delegates responsibilities under CERCLA section 104(a), as amended by SARA, to FEMA to provide for:

1) permanent relocation of residents, businesses and community facilities

2) temporary relocation of threatened individuals.

When FEMA assistance is required, the OSC should contact his/her appropriate Regional FEMA counterpart. Once Fund-financed response is underway, FEMA can provide assistance to the OSC in determining the need for a temporary relocation and planning response measures. Pursuant to the Disaster Relief Act of 1974 (PL 93-288), the OSC is required to advise FEMA of potential major disaster situations, when relocation is identified as an option at the site.

The OSC must notify FEMA in writing of the need for temporary relocation as part of the removal. In making such determinations, the OSC should consult with ATSDR and appropriate State agencies regarding potential health risks that may affect the need for relocation. The OSC must determine the boundaries of the affected area targeted for relocation and the need for FEMA to provide site security and/or pay for the decontamination of personal property.

In the course of CERCLA response, FEMA shall:

- Provide technical assistance to the OSC in planning for relocation, e.g., estimating the cost of relocation

- Implement temporary relocation including negotiation of leases and rent reimbursements and provision of essential utility costs at the original residence and other miscellaneous relocation expenses
- Provide site security at sites when requested by the OSC
- Pay individuals for decontamination of household items and/or acquisition of contaminated personal property, when requested by EPA
- Support EPA in developing and carrying out community relations activities with regard to relocation activity.

Other FEMA responsibilities are further detailed in the EPA-FEMA MOU.

All costs for site-specific relocation activities, except for assistance provided to determine the need for relocation, are funded via a site-specific IAG, which is executed by the Region. FEMA receives an annual budget that covers all costs of assistance in determining the need for relocation.

V. POTENTIALLY RESPONSIBLE PARTIES

This chapter sets forth the standard sequence of steps that should be followed to secure and oversee potentially responsible party removal actions and discusses the types of situations that OSCs are likely to encounter during a private party removal action. A brief discussion of the relationship between enforcement, OSC and other Regional personnel (e.g., Office of Regional Counsel, program managers, community relations staff) responsibilities is also provided.

V. POTENTIALLY RESPONSIBLE PARTIES

The intent of CERCLA and EPA policy is that private parties causing or contributing to a release should take responsibility for response actions. Where responsible parties are known, but do not take appropriate or timely actions, EPA will issue CERCLA section 106 Administrative Orders (AOs) where appropriate. If orders are not complied with, EPA will initiate a Fund-financed removal action and pursue opportunities to recover, under section 107 of CERCLA, all costs incurred under the Trust Fund. Where immediate response is necessary, it may not be appropriate to issue AOs prior to initiating response actions. In these cases, EPA will conduct a Fund-financed response and seek to recover costs from potentially responsible parties (PRPs) later. To carry out this policy, OSCs and Regional enforcement personnel must coordinate efforts to identify and compel PRPs to perform removal actions.

A. OSC ENFORCEMENT RESPONSIBILITIES

Although OSC enforcement responsibilities may vary from Region to Region, generally, OSCs work with the Regional enforcement staff and the Office of Regional Counsel (ORC) to identify and compel potentially responsible parties to respond (NOTE: for removals at NPL sites, the PRP search may have been performed by the remedial enforcement program). Regional technical enforcement staff is available to assist OSCs in conducting the PRP search, PRP notification and negotiation. Generally, each Region has a technical enforcement office and an Office of Regional Counsel consisting of personnel with scientific and legal expertise who work together to ensure that Fund-financed responses meet both program objectives and legal requirements. In some Regions, the OSC is a part of the technical enforcement staff. In other Regions, the OSC is part of a separate office, but the CERCLA enforcement program provides legal and technical support.

OSCs generally work with the Regional enforcement staff and ORC in conducting initial investigations and in initiating contact with PRPs (e.g., issuance of notice letters or oral notice in the event of an emergency situation to be followed by written notice). PRP searches should be conducted at all NPL and non-NPL sites in support of any future cost recovery actions. Additionally, OSCs should support the efforts of Regional enforcement in conducting PRP negotiations and, if appropriate, prepare an AO. The extent of PRP search and negotiation activities will depend upon the exigencies of the situation. A responsible party (RP) action may begin at any phase of a removal response.

B. SECURING POTENTIALLY RESPONSIBLE PARTY ACTION

Exhibit V-1 depicts the typical sequence of actions taken to secure PRP responses. This chart is intended to identify the steps involved in securing a PRP response and the Regional staff/offices that are generally responsible for taking those steps. Actual Regional practices may vary.

1. Potentially Responsible Party Search

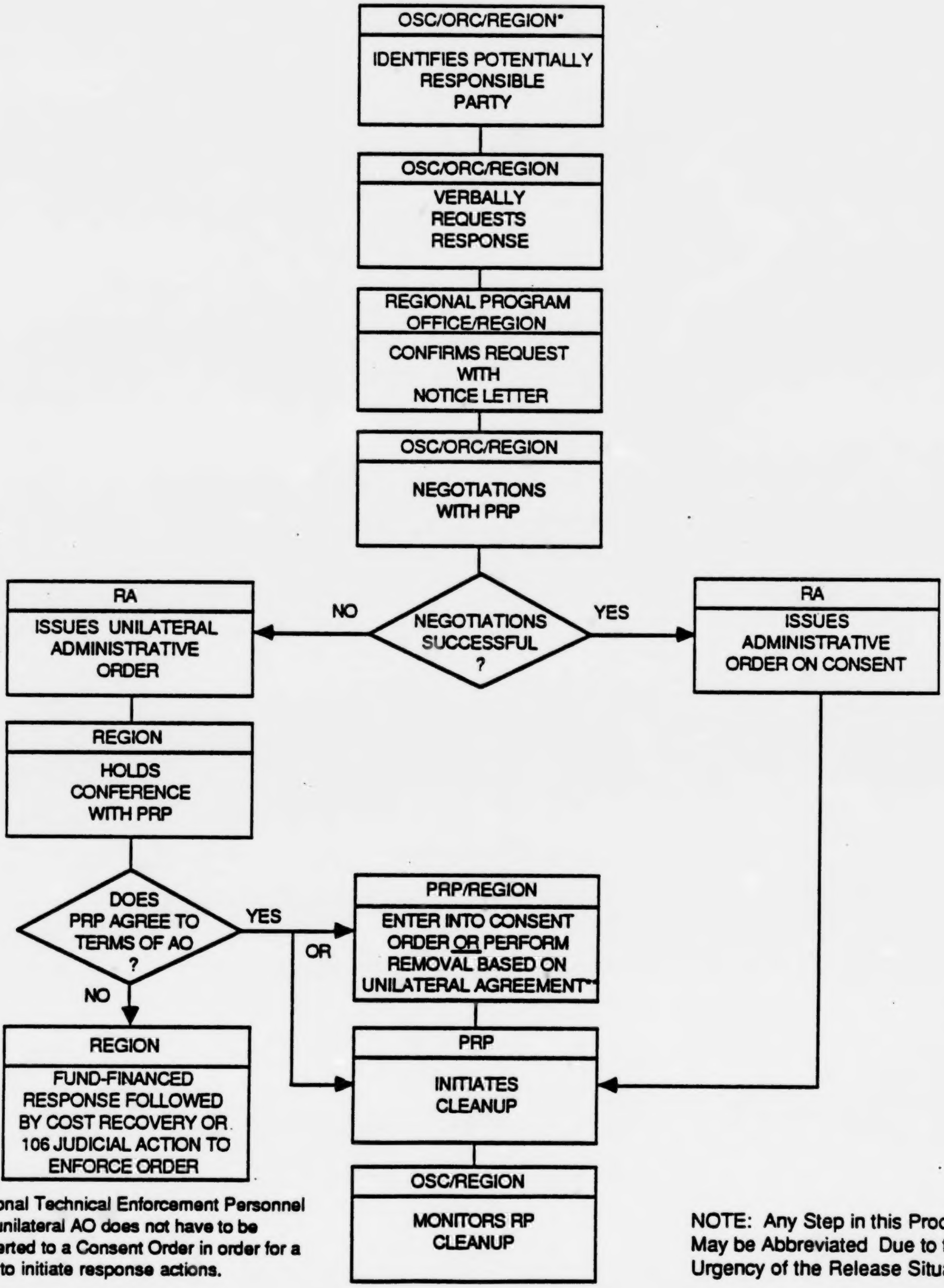
Before seeking CERCLA funding, OSCs should make a reasonable effort to identify PRPs and compel them to perform cleanup activities. A PRP investigation is generally part of the preliminary assessment that an OSC conducts under section 300.64 of the NCP. In consultation with Regional Counsel and technical enforcement staff, OSCs must make an effort to identify PRPs. The level of effort of the PRP search depends upon the immediacy and seriousness of the release situation. In extremely urgent situations, the OSC can follow streamlined procedures, consisting of oral inquiries of reasonably available on-site sources who may be knowledgeable of the situation, as well as reviews of readily available site records. Oral inquiries should be documented as soon as practicable. Less urgent situations require the OSC to take additional steps, such as further questioning of persons on or near the site (e.g., residents, adjacent property owners, nearby homeowners) and on-site investigation for responsible party clues (e.g., company identification on drums, materials and containers). OSCs are encouraged to take pictures of, look for, and secure PRP evidence.

It is extremely important that OSCs fully document all findings at the site in anticipation of litigation. After the OSC has made a reasonable effort to identify PRPs, he/she may request Regional enforcement personnel to conduct a responsible party search using Technical Enforcement Services (TES) contract support. Other support may be available through the use of 8(a) Contractors. The Regional enforcement office will then conduct a thorough PRP search. Where there are time limitations, the PRP search may prioritize and expedite certain search activities to support the notice, negotiation and order process before the removal begins. In any event, OSCs should be prepared to obtain the necessary approval to conduct the response.

If no PRPs can be located prior to the initiation of an EPA-lead removal action, efforts to locate PRPs should continue throughout the removal action. If PRPs are located before or during an EPA-lead removal, enforcement staff or the OSC, if appropriate, should initiate negotiations with the PRP to determine the extent of PRP involvement in the response action. A complete PRP search should be conducted to support cost recovery efforts. In addition, OSCs must maintain complete documentation of decisions made (and the basis for them), action taken and all site-specific, Fund-financed expenditures in the event that cost recovery action is taken against the PRP. OSCs should work closely with cost recovery staff in the Regions and Headquarters to document Fund-financed expenditures. OSCs should refer to Chapter III, Section F.3 of this manual for additional information on cost documentation. EPA guidance on cost recovery is currently under development. For further information on PRP searches, see OSWER directive #9834.6, "Potentially Responsible Party Search Manual" (August 27, 1987).

EXHIBIT V-1

SECURING POTENTIALLY RESPONSIBLE PARTY ACTION


OSC/ORC/REGION*
IDENTIFIES POTENTIALLY RESPONSIBLE PARTY
OSC/ORC/REGION
VERBALLY REQUESTS RESPONSE
REGIONAL PROGRAM OFFICE/REGION
CONFIRMS REQUEST WITH NOTICE LETTER
OSC/ORC/REGION
NEGOTIATIONS WITH PRP
NEGOTIATIONS SUCCESSFUL ?
NO
YES
RA
ISSUES UNILATERAL ADMINISTRATIVE ORDER
RA
ISSUES ADMINISTRATIVE ORDER ON CONSENT
REGION
HOLDS CONFERENCE WITH PRP
DOES PRP AGREE TO TERMS OF AO ?
YES
OR
NO
PRP/REGION
ENTER INTO CONSENT ORDER OR PERFORM REMOVAL BASED ON UNILATERAL AGREEMENT**
REGION
FUND-FINANCED RESPONSE FOLLOWED BY COST RECOVERY OR 106 JUDICIAL ACTION TO ENFORCE ORDER
PRP
INITIATES CLEANUP
OSC/REGION
MONITORS RP CLEANUP

*Regional Technical Enforcement Personnel

**The unilateral AO does not have to be converted to a Consent Order in order for a PRP to initiate response actions.

NOTE: Any Step in this Process May be Abbreviated Due to the Urgency of the Release Situation.

2. Notification and Request for Response

Following identification of PRPs, the OSC must initiate actions to obtain PRP response. Thus, the OSC, in consultation/coordination with Regional enforcement staff, must:

- Notify the PRP that EPA is planning to perform emergency action at the site
- Request a removal action by the PRP
- Inform the PRP of the potential liability under CERCLA section 107 if he/she is determined to be a responsible party and either fails to respond or responds improperly.

The specific timing of the procedure for notification will depend upon the urgency of the situation. Notification should give the PRPs a reasonable amount of time to respond; however, what is reasonable is clearly related to the exigencies of the situation. In all situations, however, the OSC should ensure that Regional enforcement personnel are informed of any PRP response.

In urgent situations, the OSC may notify the PRP verbally. The Regional program office then should prepare and send a "notice letter" to the PRP confirming the verbal request for response and notification of liability. While a notice letter typically precedes the initiation of an Administrative Order (described in V.A.3 below), this is not necessary in emergencies, given the limited time available. The Regional program office should send the notice letter as soon as possible following the verbal notification.

For less urgent situations, procedures for obtaining PRP response should be essentially the same as those for remedial actions. Notice letters should be issued to PRPs and, depending upon the response, an Agency team of Regional technical and legal personnel should quickly schedule negotiations aimed at securing PRP cleanup within an established period of time. In the typical scenario, the Regional program office should send notice letters to all known PRPs prior to the initiation of the removal action. EPA issued guidance on the use of notice letters and the conduct of negotiations in "Interim Guidance on Notice Letters, Negotiations, and Information Exchange" (October 19, 1987). This document includes guidance on the circumstances in which removal notice letters (including "special" notices under section 122(e)) should be issued, the timing and content of such notices as well as information on the conduct and conclusion of negotiations. In general, the guidance indicates that the Regions should provide some type of written notice to PRPs, but the use of "special notices" should only be considered for long-term removal actions because the issuance of a special notice triggers a temporary moratorium on EPA action and a specific time frame for negotiations. The guidance recommends using the 122(e) special notice procedures only for those removals where it is not necessary to initiate an action for at least six months.

3. Potentially Responsible Party Negotiations

Where PRPs respond with an interest in undertaking the removal action, Regional staff should arrange for negotiations to take place. OSCs, in conjunction with CERCLA enforcement staff, should establish a time frame for conducting negotiations (NOTE: for time-critical removals, Regional staff may bybass negotiations and immediately issue a unilateral Administrative Order). The time period for negotiations should be reasonable considering the nature of the work being discussed and the exigencies of site conditions. The product of negotiations should be an Administrative Order on Consent (AOC), which embodies the technical workplan for the response action. Drafts of both documents should be available to the PRPs early in the negotiations. Enforcement staff will take the following steps when preparing for and conducting negotiations with PRPs:

- Obtain PRP information from State files
- Obtain PRP financial information to the extent available
- Prepare draft AO
- Develop workplan for PRP response
- Meet with PRPs
- Begin assembly of the Administrative Record File
- Negotiate language in AO or technical points in workplan
- Coordinate with Headquarters, State and PRPs to obtain signatures
- Issue AO.

Due to the time sensitive nature of removal incidents, the negotiation process is often accelerated and certain steps described above may be eliminated.

a. Administrative Orders

Section 106 of CERCLA empowers EPA to issue AOs to compel cleanup by PRPs. EPA policy is to proceed with a CERCLA 106 unilateral Administrative Order if PRPs fail to respond appropriately to the oral/written notification and negotiation process described above, provided the following criteria are met:

- Finding of an actual or threatened release of a hazardous substance from a facility

- Site conditions that may present an imminent and substantial endangerment (Note: courts have interpreted this standard very broadly and have not required a finding of immediate threat)

- Notification to the affected State.

If possible, the draft AO should be prepared by Regional personnel prior to the initial negotiations. Current policy is for Regional enforcement staff to issue a unilateral AO whenever there is a known PRP before Fund activation, provided the delay in initiating response does not pose an unacceptable risk of harm to the public health.

welfare or the environment. The OSC and other Regional personnel should continue the process of preparing the Action Memorandum and obtaining approval for a Fund-financed action. Action Memoranda should contain an "Enforcement Sensitive" section that includes information on the enforcement strategy, PRP response and previous enforcement actions (see Chapter III, Section C.8, of this manual for additional information on the preparation of Action Memoranda).

If site conditions deteriorate, creating a corresponding increase in threat, the OSC should immediately initiate on-site response activities while the AO process continues. In such cases, the AO should be revised to require the PRP to commence cleanup activities at the next convenient break in the response. Assembly of the Administrative Record should commence simultaneously.

The recipient of the AO may agree to comply with the terms of the unilateral Order. In some cases, EPA may withdraw the unilateral AO where it is simultaneously replaced by an Administrative Order on Consent. EPA generally does not devote a significant amount of time to a second round of negotiations. If the recipient does not agree to the terms, EPA generally will proceed with a Fund-financed response and will sue for cost recovery, including punitive damages in appropriate cases (see Exhibit V-1). In some cases, it may be appropriate to enforce the terms of the Order and compel PRP response through a judicial enforcement action. Guidance on the issuance of AOs for removals is contained in the memoranda "Use and Issuance of Administrative Orders under Section 106(a) of CERCLA" (Courtney Price, Lee Thomas, September 8, 1983) and "Issuance of Administrative Orders for Immediate Removal Actions" (Lee Thomas, February 21, 1984). Appendix 18 contains copies of these memoranda.

b. Oversight of Responsible Party Responses

An AO must prescribe the activities the responsible party must undertake as well as the completion date for the entire response and its discrete components, including oversight provisions and associated costs. Where the terms of the Order are not being met, the OSC should coordinate with technical enforcement staff and ORC as to appropriate action.

Regional personnel responsible for monitoring RP compliance should either remain on site or visit the site periodically, whichever is appropriate given the circumstances of the release and the nature of cleanup activities. Oversight may be supplemented through use of contract resources (TES) and, in addition to oversight of field activities, should include technical review of workplans, protocols, site data and reports.

Costs associated with oversight of PRP response actions, including removal actions, are fully recoverable. Oversight costs may vary considerably among removal actions depending upon the extent and duration of removal activities. To facilitate the preparation of potential future cost recovery actions against either PRPs conducting the removal or other non-participating PRPs, OSCs should comply with the cost documentation procedures described in Chapter III. Recoverable costs include both intramural (e.g., EPA payroll and travel) and extramural (Agency contractors' costs) oversight costs. The "Superfund Indirect Cost Manual for Cost Recovery Purposes FY 83 through FY 86" (March 1986) developed by the Superfund Accounting Branch, Financial Management Division provides an explanation of how EPA's extramural cost rates are developed and how those rates should be used to calculate extramural oversight costs for individual Superfund sites.

In the instance where the Agency is negotiating an Administrative Order on consent for a PRP removal action, the Region should attempt to secure an agreement within the administrative order for reimbursement of oversight costs by the PRP. Such an agreement is highly desirable in removal actions that may require a long period of time to implement and extensive oversight by the Agency and/or its representatives. In the alternative, the reservation of rights clause should explicitly perserve the Agency, ability to seek these oversight costs in potential future actions. Full documentation of oversight costs should be done in either instance.

In summary, the following procedures are required to coordinate attempts to obtain PRP response with approval of Fund financing:

- The OSC should inform appropriate Regional staff, as well as HQ OERR and OWPE, of a potential Fund-financed removal
- The OSC, Regional enforcement staff or Regional Counsel should attempt oral notification of the PRP, followed by written notification
- The OSC should make a recommendation on the issuance of an AO
- Regional enforcement personnel should draft the AO using information provided in the Action Memorandum (i.e., site visits, State enforcement files, preliminary PRP search information)
- EPA officials should schedule a conference with the PRP, and the OSC and Regional enforcement should agree upon a deadline for the conclusion of PRP negotiations
- Assembly of the Administrative Record file should commence
- If the deadline passes and/or the AO is not issued, or if site conditions deteriorate, the OSC may initiate Fund-financed removal action.

4. Criminal Investigation

If at any time during removal actions criminal activity is suspected, the Special-Agent-In-Charge (SAIC) of NEIC should be immediately notified to begin criminal investigative activities. In situations where a criminal investigation has been initiated by the NEIC, cooperation and coordination among the OSC, Regional Counsel and the NEIC will be necessary. Regional enforcement and program office staff may therefore be requested to provide legal and technical support for an investigation through consultation or actual field work. Also, in those cases that are prosecuted and go to trial, it may be necessary for the Regional technical staff (i.e., the OSC, Regional enforcement personnel) to testify. Additional information on criminal investigations and the role of the NEIC and Regional personnel is provided in the memorandum "Functions and General Operating Procedures for the Criminal Enforcement Program" (Courtney M. Price, AA, Office of Enforcement and Compliance Monitoring, January 7, 1985).

C. TYPES OF RESPONSIBLE PARTY RESPONSES

As noted earlier, responsible party action may begin at any phase of a removal response. Responsible parties may either agree to perform all required work on a site prior to initiation of Fund-financed removal activities or take over a response action initiated by EPA and perform all remaining work. In any case, EPA will monitor RP site activities. If the Agency determines that the RP is not properly conducting the response and is thereby violating the terms of the AO, EPA should take action to correct the violations. If uncorrected, EPA may take over the removal action. Close coordination with technical enforcement staff and Regional Counsel is critical in such instances. The following describes different circumstances that OSCs may encounter surrounding RP responses:

- Responsible party cleanup -- The RP assumes responsibility from the outset, precluding the need to initiate a Fund-financed response. The mechanism for obtaining responsible party action is an AO as described above in Section V.B.3.a. OSCs or CERCLA enforcement personnel must monitor the responsible party removal to ensure compliance with the Order.

- Responsible party takeover -- The exigencies of the situation necessitate commencement of Fund-financed activities prior to the completion of negotiations with the responsible party. Processing of an AO continues, however, and at a convenient break in the response activities, EPA demobilizes its contractor and the RP assumes responsibility for the remaining activities required. OSCs or CERCLA enforcement personnel monitor the response to ensure compliance with the AO.

- EPA takeover -- The RP agrees to undertake response action, but OSC or CERCLA enforcement personnel monitoring shows that the actions are not timely or appropriate. EPA either takes action to enforce the AO by 106 judicial action or takes over the response and pursues cost recovery.

In addition, an RP may challenge the AO. While this situation is possible, it rarely occurs in the removal program. Appendix 19 contains examples of each of the situations described above.

VI. REMOVALS AT FEDERAL FACILITIES

This chapter briefly discusses the roles and responsibilities of Federal agencies and EPA for removal actions at Federal facilities, as set forth in E.O. 12580. The first part discusses Federal agency lead removals and the second part addresses EPA-lead actions at Federal facilities.

VI. REMOVALS AT FEDERAL FACILITIES

Under E.O. 12580, Federal facilities have been delegated the authority to conduct "non-emergency" removal actions at facilities under their jurisdiction. DOD and DOE have also been delegated the authority to conduct emergency removal actions at facilities under their jurisdiction. Responsibility for responding to all other emergency situations rests with EPA. In accordance with E.O. 12580, Federal agencies are responsible for funding response actions taken at facilities under their jurisdiction. In limited circumstances, EPA may lead "non-emergency" removal actions at Federal facilities.

A. FEDERAL AGENCY LEAD

When conducting a "non-emergency" removal action, Federal agencies must comply with all of the substantive and procedural requirements under sections 107(g) and 120 of CERCLA, as amended by SARA, and the NCP. Thus, they must:

- Report releases of hazardous substances, contaminants or pollutants
- Evaluate releases and threats of releases
- Determine and select an appropriate response action
- Conduct the response.

Even in instances where NCP requirements are not strictly applicable, such as the statutory time and dollar limits for removal actions, Federal agencies should consider the intent of, and reasoning behind, the NCP provisions when conducting response actions at their own facilities. Regarding the removal statutory limits, Congress intended that removal actions continue to be limited in scope. Federal agencies generally should comply with the removal statutory limits or meet the requirements for one of the two statutory exemptions from the limits, as described in the NCP. The agencies should use the same types of considerations in determining how other NCP provisions apply to them when conducting removal actions at facilities under their jurisdiction.

EPA OSCs have substantial, valuable expertise in conducting removals and may be called on to help Federal agencies select and plan their responses. The types of technical assistance that OSCs may provide include:

- Reviewing preliminary assessment data to ascertain whether they support the need for removal response

- Reviewing proposed cleanup strategies with respect to technical feasibility, accuracy of cost estimates and compliance with other environmental statutes and policies (e.g., OSWER's "Off-site Policy")

- Providing input to worker and visitor health and safety plans and community relations plans
- Facilitating the processing of requests for TAT or NCLP resources
- Coordinating other Federal agency assistance, preferably through the RRT.

To assist Federal agencies in responding to releases, OERR is developing a Federal facilities program manual that will provide guidance to Federal agencies in implementing their CERCLA responsibilities.

B. EPA-LEAD REMOVALS

As noted earlier, under E.O. 12580 EPA is responsible for performing all emergency removal actions, including such actions at Federal facilities, with the exception of emergency removal actions at DOD or DOE facilities. At the request of a responsible Federal agency, if that agency does not have the technical capability or cannot respond in a timely manner, EPA may lead a "non-emergency" removal action at a Federal facility. In any case, the responsible Federal agency must fund the response. To initiate an EPA-lead removal action at a Federal facility, the responsible Federal agency should transfer money to EPA via an IAG. Only for those EPA-lead emergency removal actions where time does not permit transfer of funds may EPA utilize the Trust Fund and seek Federal agency reimbursement. Trust Fund monies are not to be used for conducting non-emergency removals at Federal facilities.

EPA-lead removals at Federal facilities must comply with all procedures and requirements set forth in this manual pertaining to other EPA-lead, CERCLA-financed removals. If EPA uses Trust Fund monies, the statutory limitations on cost and duration apply.

VII. CLAIMS AGAINST THE FUND

This chapter describes the circumstances under which a private party may choose to perform response actions and seek reimbursement from the Fund for response costs. The first section describes those situations which may precipitate other party response and sets forth the requirements for prior approval (preauthorization) by EPA so that other parties can be reimbursed by the Fund. The second section sets forth Regional responsibilities in the response claims process.

VII. CLAIMS AGAINST THE FUND

Section 111 of CERCLA, as amended by SARA, authorizes the President to use the Fund for the payment of necessary response costs incurred by other parties in carrying out the National Contingency Plan. Claims procedures are set forth in section 112 of CERCLA, as amended by SARA. The mechanism for reimbursement of these costs is the filing of a response claim. Executive Order 12580 delegates to the Administrator of EPA the functions vested in the President by sections 111 and 112 of CERCLA, as amended by SARA, to administer a claims program. Section 111 also authorizes certain parties to file claims for the assessment and restoration of natural resources; however section 517 of CERCLA, as amended by SARA, explicitly prohibits the use of any Trust Fund money for the payment of natural resource damage claims until 1991, when the current five year taxing authority expires.

A. RESPONSE CLAIMS

Most cleanup activities responses will be undertaken by 1) a responsible party under an AO or consent agreement with EPA, 2) a State under a duly authorized Superfund Cooperative Agreement or Superfund State Contract or 3) a Federal-lead agency and its contractors. Parties may respond and potentially receive CERCLA reimbursement under section 111(a)(2) of CERCLA. Before responding, these parties must seek and receive preauthorization in accordance with section 300.25(d) of the NCP. Preauthorization ensures that only those sites that are in EPA's priority scheme will receive funding, that the party has sufficient technical capability to conduct a response action, and that scarce Fund resources will be utilized only for those sites posing the greatest threat to human health or the environment. EPA's forthcoming claims regulation and guidance will stress that the preauthorization of a claim should only be considered in those circumstances where the threat of fire, explosion or direct human contact does not exist and there is sufficient time to evaluate a request for preauthorization.

Other parties may perform a response action when: 1) a threat posed by a particular release is not deemed by EPA to be serious and/or immediate enough to warrant an emergency Federal-lead response, or 2) due to cost limitations, Federal response does not remedy a threat to the extent desired by the party. In addition, under section 122(b) of CERCLA, as amended, the Federal government may agree (via mixed funding settlements) to partially reimburse responsible parties that fund or perform response actions where other responsible parties are unknown, are insolvent or refuse to respond. EPA issued mixed funding guidance on October 20, 1987 ("Evaluating Mixed Funding Settlements under CERCLA"). The guidance indicates that mixed funding arrangements involving preauthorization are generally only available for remedial actions. Exceptions to this general rule may be considered only in extraordinary circumstances (e.g., a large, extensive removal of greater than $2 million).

In all circumstances, responsibility for processing the preauthorization request rests with HSCD. HSCD will coordinate the HQ review and approval process and verify that each preauthorization request contains information about the release, the proposed cleanup actions and the applicant's capabilities to perform the proposed response. HSCD also will consult the Regions on whether to grant preauthorization. HSCD is responsible for administering the claims program; however, the AA, OSWER determines who will receive preauthorization for reimbursement.

B. REGIONAL RESPONSIBILITIES

Regions have four primary responsibilities related to the claims procedure. First, the Region may serve as the first point of contact between a potential claimant and EPA. The Region must be prepared to advise the claimant regarding the appropriate procedures and often whether there is sufficient time to consider preauthorizations. During the preauthorization process, the Regions should be prepared to serve as a technical resource to OERR and assist in providing needed information and evaluations. Second, once preauthorization has been granted, the Regions must monitor other party response actions in accordance with procedures found in Chapter V, Potentially Responsible Parties. Third, Regions may be asked by HSCD to assist in evaluating any requests by the other party for modifications to the approved preauthorization request. Finally, after the other party has completed the response action and submitted a response claim to HQ, OERR may consult with the Regions to confirm that activities were consistent with the preauthorization request and that response costs were reasonable.

Procedures for handling response claims and criteria for approving preauthorization are currently being developed, and will appear in 40 CFR Part 307. Until these regulations are promulgated, all requests for preauthorization and response claims will be handled by HSCD on a case-by-case basis.

In addition, ERD has developed procedures to reimburse local governments for temporary emergency measures as provided for in section 123 of CERCLA, as amended by SARA. An interim final regulation was published in FR 39386 (40 CFR Part 310) on October 21, 1987.

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APPENDIX 1

STRATEGIC PLANNING AND MANAGEMENT SYSTEM (SPMS) REPORT

APPENDIX 1
SAMPLE STRATEGIC PLANNING AND MANAGEMENT SYSTEM (SPMS) REPORT

The following are portions of a SPMS report, used by the Office of Management Systems Evaluation to monitor and evaluate Regional performance under the removal program. The report shows actual Regional quarterly performance (P) (i.e., the number of NPL starts and stabilizations) against the quarterly targets (T).

4/8/87

SUMMARY REPORT
HQ-REPORTED PERFORMANCE

REMOVAL FIRST START
AT AN NPL SITE (FUND AND PRP FINANCED) (S/C-3(a))*

ORGN	NO Q1 TARGET	Q1P	NO Q2 TARGET	Q2P	NO Q3 TARGET	Q3P	Q4T	Q4P
R 1		0					4	
R 2		1					7	
R 3		0					6	
R 4		0					7	
R 5		0					6	
R 6		2					2	
R 7		0					3	
R 8		0					3	
R 9		0					2	
R 10		0					1	
Natl		3					41	

SUMMARY REPORT
HQ-REPORTED PERFORMANCE

REMOVAL RESTARTS AT NPL SITES (FUND AND PRP FINANCED) (S/C-3(b))*

ORGN	Q1P	Q2P	Q3P	Q4P
R 1	1			
R 2	2			
R 3	1			
R 4	0			
R 5	0			
R 6	1			
R 7	0			
R 8	0			
R 9	0			
R 10	0			
Natl	5			

*SPMS Reporting Measure only; there are no annual targets

4/8/87

NPL STABILIZED
VIA A REMOVAL ACTION (FUND AND PRP) (S/C-4)*

ORGN	NO Q1 TARGET	Q1P	NO Q2 TARGET	Q2P	NO Q3 TARGET	Q3P	Q4T	Q4P
R 1		2					4	
R 2		2					6	
R 3		0					4	
R 4		0					5	
R 5		1					10	
R 6		0					2	
R 7		1					5	
R 8		0					3	
R 9		0					1	
R 10		0					3	
Natl		6					43	

APPENDIX 2

SUPERFUND COMPREHENSIVE ACCOMPLISHMENTS PLAN (SCAP) REPORTS

NATIONAL AND REGIONAL REMOVAL TARGETS
SAMPLE REPORT

NPL TARGETS

Number of CERCLA-funded removal actions to be started for NPL sites.

Region	Q1	Q2	Q3	Q4	Region's Submission	Final* Passback
I	0	1	0	1	2	2
II	1	1	1	1	4	4
III	0	2	2	1	5	5
IV	0	2	2	1	5	5
V	3	0	1	0	4	4
VI	1	1	1	0	3	3
VII	1	1	0	0	2	2
VIII	2	0	1	0	3	3
IX	0	1	1	1	3	3
X	1	0	1	0	2	2
Totals	9	9	10	5	33	33

Number of CERCLA-funded removal actions to be completed for NPL sites.

Region	Q1	Q2	Q3	Q4	Region's Submission	Final * Passback
I	1	2	0	1	4	2
II	1	0	2	1	4	4
III	0	1	2	2	5	5
IV	0	2	1	1	4	4
V	2	1	0	1	4	4
VI	0	1	1	1	3	3
VII	0	1	1	0	2	2
VIII	0	2	0	1	3	3
IX	0	1	1	1	3	3
X	0	0	1	0	1	1
Totals	4	11	9	9	33	31

* Final Passback is the finalized annual SPMS target.

QUARTERLY REGIONAL SITE-SPECIFIC ACTUAL STARTS
SAMPLE REPORT

```
5/ 8/86                                                                                                   PAGE    6

                               FY86 QUARTERLY REMOVAL PLANS AND ACCOMPLISHMENTS SUMMARY

                                            REMOVAL STARTS FOR QUARTER 2

                                                  FOR REGION 04

                                        PLAN   ACTUAL    PLAN   ACTUAL    2Q PLANNED       FY86
SITE NAME                    ST  NPL  STRT    START    COMP  COMPLETE  OBLIGATION     OBLIGATN  COMMENTS
---------------------------- --  ---  ----  -------   ----  --------  ----------     --------  ------------------------------

NESBIT SCALE HOUSE           MS  N     0/0  1/29/86    0/0   2/13/86           0        8.000

BARROW CO.  DRUM SITE        GA  N     0/0  1/31/86    0/0   2/13/86           0        5.000

REIMER DRUM                  SC  N     0/0  3/13/86    0/0    /  /             0       25.000

U.S. HWY 1 TRUCK SITE        NC  N     0/0  3/13/86    0/0   3/18/86           0            0

EARL ALLEN CHEMICAL SITES    SC  N     0/0  3/24/86    0/0    /  /             0       20.000

CLAYTON BALLFIELD PESTICI    NC  N     0/0  3/31/86    0/0   4/ 4/86           0            0  PESTICIDES DISCOVERED DURING GRAD
                                                                      ----------   ----------
        REMOVALS STARTED THIS QUARTER FOR REGION 04 --->           6           0       58.000
```

QUARTERLY REGIONAL SITE-SPECIFIC PLANNED STARTS
SAMPLE REPORT

```
5/ 8/86                                                                                                   PAGE

                               FY86 QUARTERLY REMOVAL PLANS AND ACCOMPLISHMENTS SUMMARY

                                            PLANNED STARTS FOR QUARTER 3

                                                  FOR REGION 04

                                        PLAN   ACTUAL    PLAN   ACTUAL    3Q PLANNED       FY86
SITE NAME                    ST  NPL  STRT    START    COMP  COMPLETE  OBLIGATION     OBLIGATN  COMMENTS
---------------------------- --  ---  ----  -------   ----  --------  ----------     --------  ------------------------------

BURKETT CYLINDER SITE        SC  N    86/3    /  /    87/1    /  /       100.000            0

LEE ROAD ACID DRUMS          GA  N    86/3    /  /    87/1    /  /        25.000            0
                                                                      ----------   ----------
        PLANNED STARTS THIS QUARTER FOR REGION 04 --->           2       125.000            0
```

APPENDIX 3

REMOVAL PROGRAM COST CATEGORIES

CERCLA REMOVAL RESPONSE COSTS

REGIONAL ALLOWANCE	IAGS* CAs** Extramural Cleanup Contractor Costs - ERCS Delivery Order - Notice to Proceed - Order for Service - Letter Contract (State & Local Government)
HEADQUARTERS BUDGET	Other Extramural Costs - TAT - NCLP - ERT (REAC) - FIT
REGIONAL INTRAMURAL BUDGET	Intramural Costs - Direct Costs# - Indirect Costs
HEADQUARTERS INTRAMURAL BUDGET	# 10% of Intramural Direct Hours - ERT
TOTAL PROJECT CEILING	

* IAGs = Interagency Agreements
** CAs = Cooperative Agreements

APPENDIX 4

TYPES OF REMOVAL INCIDENTS (EXAMPLES)

TYPES OF REMOVAL INCIDENTS (EXAMPLES)

Active Production Facility

(1) Fire/Explosion at a Chemical Plant

A company produces chlorinated paraffin and wax and is located on five acres of land in an industrial district. An explosion and fire occurred during plant operations, killing 2 people and injuring 64 others. The explosion sent clouds of toxic fumes into the air, necessitating the evacuation of 5000 residents. The threats to plant employees and nearby residents included direct contact as well as fire and explosion hazards and air, soil, drinking water, and surface water contamination. The OSC requested the Region's FIT Team and groundwater section personnel to assist with groundwater problems on site. Emergency cleanup was completed in 12 days, and included the removal and disposal of 35,000 gallons of the following liquid wastes: hydrochloric acid, sulfuric acid, nitric acid and phosphoric acid. In addition, 640 cubic yards of contaminated soil were transported and disposed of subsequent to the removal of heavy debris from the explosion.

(2) PCB Contamination at a Salvage Yard

An unsecured salvage yard where transformers are built, refurbished, drained and prepared for disposal threatened nearby residences with direct exposure to PCB contaminants. Approximately half the land within a two-mile radius of the site is classified as prime agricultural land; in addition, approximately 200 people and several dairy farms are located within a one-mile radius of the site. Removal actions entailed installation of a security fence, sampling and inventorying of transformers, soil and well sampling of the site and area residences, and disposal of PCB-contaminated liquids, contaminated soil and debris. The removal was completed in approximately seven weeks and the case referred back to remedial personnel for continued action.

(3) Fire/Explosion at a Chemical Warehouse

A fertilizer and pesticide distribution warehouse located in an industrial/residential area caught fire, resulting in an explosion and release of airborne contaminants. The incident required the temporary evacuation of nearly 11,000 residents. Most materials onsite were consumed by the fire and the remaining solids and liquids were analyzed for bulk transport and disposal. The warehouse was steam-cleaned and all pesticides, chemicals and contaminated debris were removed and disposed of. The site was cleaned up and the action completed within a three-week period.

Inactive Production Facility

(1) PCBs and Dioxin at a Wood Treatment Facility

Seven unlined waste water ponds at a twenty-five-acre wood treatment facility were excavated in 1982 and the waste water sprayed on nearby woods. The contaminated sludge was spread on a treatment area near the site. PCB-contaminated oil waste continues to be discharged into a tributary and dioxin has been found onsite. Forty persons live within a quarter-mile of the site and access is unrestricted. CDC recommended action to prevent off-site migration. The threats included direct contact and surface and groundwater contamination. Removal actions included sampling of wells, installing a security fence, and controlling the lagoon by an underflow dam and downstream fences. In addition, the area around the former processing building was capped. Delays were encountered due to lab performance and ERT personnel shortage. The case is pending further removal actions.

(2) Radiation Threat at a Former Radium Processing Facility

Several homes in two communities were built near a former radium processing facility. Several of the residences tested for contamination registered at levels far exceeding the EPA action level. Residents were informed to avoid areas of the yards where gamma readings were identified. Removal activities included installation of radon reduction systems in several homes and the inclusion of air conditioning units in some residences to counterbalance heat and humidity problems caused by these radon reduction systems. ERCS conducted an extent-of-contamination and source characterization study. Contaminated soil was removed and an RI/FS study will be conducted by the remedial program at this site.

(3) Fire/Explosion Hazards at an Inactive Refinery

An inactive refinery was abruptly shutdown in 1979. Laboratory chemicals such as acids, bases, solvents, and organic chemicals have been found on site. The main building had been heavily vandalized and children play on the site. There is a residence within 10 feet of the property and a church within 150 yards. The area is generally rural. Threats to the area population include fire and explosion hazards and direct contact. The removal action entailed providing site security and disposing of the lab chemicals. The lab chemicals were placed in nine drums, which are secured on site and are pending disposal.

Active Waste Management Facility

(1) PCB Migration at an Active Reclaiming Operation

An active 1/2-acre scrap metal reclaiming operation is located in a residential neighborhood. There are 12,000 people within a 1/2-mile radius of the site. Off-site migration of PCBs into a runoff ditch, which is readily accessible to people, has been confirmed. Threats include direct contact and soil and groundwater contamination from both PCBs and dioxin. Removal actions entailed fence installation, 24-hour security, and soil removal. CDC concurred with the need for a dioxin removal for one small building located onsite. Difficulties were encountered in finding disposal facility for dioxin wastes. The case is pending resolution of dioxin issues in Headquarters.

(2) Fire at an Active Landfill

An active landfill consists of a large pit filled with drummed solids with liquids poured over them. These materials include tetrahydrofuran, ether, organics, and metals. There have been several fires in the past and the site poses a threat of fire and explosion. In addition, solvents, which had been buried in a railroad embankment alongside the site, were discovered during removal operations. The removal action consisted of clay capping the pit and extinguishing any remaining fires. Aerial infrared photos confirmed that all fires had been extinguished. Air monitoring was undertaken to sample for air toxics. The removal action also addressed the solvents and completion is pending the off-site disposal of the solvents.

(3) PCB Contamination of an Active Scrap Yard

The operator of a scrap yard was draining transformers and placing the PCB-contaminated oils into 55-gallon drums. The transformer oil was reportedly used to start trash fires. TOSCA program personnel sampled the transformer oil, which proved to be contaminated with 225 ppm to 1300 ppm of PCBs. The owner became violent and threatened to dump the oil into the East Branch of the Susquehanna River. The threat identified was direct contact and there is a public surface water intake downstream. The approved action includes removing and disposing of the transformer oils from the site. The case is pending final disposal.

Inactive Waste Management Facility

(1) Inactive Asbestos Landfill

A recreation area was built near a former asbestos landfill. The landfill ends 30 feet from the tennis courts, posing a direct contact threat through inhalation. The site slopes down toward a wetlands area that feeds into a brook, posing a threat to surface water. The removal actions by EPA included clearing off small bushes and trees and site stabilization. The site was stabilized with 12 inches of gravel, 6 inches of sand, top soil and seeding, and 5 inches of stone on the slope. Action was completed in 17 days.

(2) Groundwater Contamination at an Inactive Landfill

A 14-acre inactive landfill operated from 1920 until 1981. At some point during its operation, the owner accepted drums of industrial waste and 5-gallon pails of marine paints. Cleanup operations were started by the owner but never completed; the crushing of drums by the responsible party during attempted site cleanup spread the contaminants over a 1/2-acre area of the site. 1,500 people reside within a one-mile radius of the site and a medical center and high school are located within 4,000 feet. The primary threat to human health posed by this site is direct contact. Access to the site was virtually unrestricted and evidence indicated possible groundwater contamination. Removal actions included: construction of filter fences and sediment catch basins to control runoff during cleanup, removal and disposal of drums and contaminated soil, installation of a three-acre clay cap over areas suspected of containing buried material, and installation of monitoring wells to determine the extent of groundwater contamination. This site is listed on the NPL.

(3) Fire/Explosion Hazards at an Oil Recovery/Recycling Facility

A former oil recovery/recycling facility contains 61 above-ground storage tanks with a total storage capacity of 9 million gallons plus approximately 10 below-ground storage tanks. Large quantities of chemically-contaminated waste oil, sludge, tar, asphalt, process water and unknown liquids remain in the tanks throughout the site. Other materials include PCBs, solvents, cyanide, and lead. The threats to the surrounding population include direct contact and fire and explosion. Removal actions included site security, removal of water and PCB-contaminated oil from the tanks and removal of flammable materials from the premises. These actions were completed in less than eight months and the responsible parties (RPs) assumed responsibility for site cleanup. RP action will entail the removal of an additional 750,000 gallons of PCB-contaminated oil and sludge and removal and disposal of all contaminated drums stored onsite. EPA will monitor RP response.

Midnight Dump

(1) Drums of Solvents Dumped on a Private Property

Approximately 200 damaged drums of hazardous wastes (paint solvents and sludges) were dumped illegally on a private property. The contents spilled onto the ground, upgradient to the county's alternate water supply. The spill threatened to contaminate soil, surface water and drinking water. Although removal of the drums was delayed by heavy rains, removal action was completed in less than six weeks.

(2) Pesticide Drums Discovered on Private Property

Two drums containing pesticides (methyl parathion and toxaphene) were discovered in a wooded area that was used for local dumping. The dump was easily accessible from a highway, and a river was located about 200 yards from the drums, which were deteriorated and leaking. The removal action consisted of overpacking the two drums into four separate drums and transporting the containers to an approved landfill. Removal was completed within two days.

(3) Solvent Drums Dumped on a Roadside

Sludge and 130 drums of paint solvents were dumped at a roadside. The incident threatened surface water and was a fire and explosion hazard. The drums were first sampled and inventoried and later crushed for off-site disposal. The drums, together with contaminated soil, were removed from the site. Within eight weeks, removal action was completed.

Transportation-Related

(1) Accidental Release from a Truck

Over 3,000 gallons of methyl ethyl ketone (MEK) were accidentally released from a tank truck. The hazardous substance spilled onto the ground and into the recharge zone of a designated sole source aquifer, resulting in groundwater and soil contamination. The site took nearly six months to clean up, given the complexity of the removal activities required to address the threat. The contaminated groundwater was treated by means of pumping the water out of the ground and air stripping the MEK into the atmosphere. The groundwater was also treated by injecting a nutrient solution into the aquifer to stimulate in-ground biodegradation of low-level MEK concentrations.

(2) Ship Explosion

A shipping crate was accidentally punctured while being moved by a fork lift in a ship's cargo hold. Gas build-up in the containers in the crate caused an explosion, killing one employee; eight others suffered inhalation injury resulting from gases. The U.S. Coast Guard performed removal operations and within 12 days the loose containers of pesticides were overpacked, stored and disposed of off site.

(3) Truck Accident on an Interstate

A truck carrying a 40,000-pound load of several bottled concentrated acids (nitric, sulfuric, hydrochloric and hydrofluoric acids) crashed on a major interstate, spilling hazardous substances at the site of the accident. Toxic fumes were generated by the interaction of the acids, endangering nearby schools, residences and a trout stream. Although the trucking firm assumed responsibility for site cleanup, the OSC deemed the responsible party's action inadequate given the exigency of the situation, which included severe weather conditions. Authorization for a CERCLA-financed response was promptly obtained, the threat expeditiously mitigated and the site completely cleaned up within 18 weeks.

Other

(1) Drinking Water Contamination of Private Wells and Municipal Water Supply

The removal action involved an entire town and a 32-unit residential trailer park with a population of 75 persons, who receive their water from private wells. Routine testing of the town's and trailer park's wells indicated high levels of contaminants. The State closed down the town's well and restricted the use of the trailer park's water supply to purposes other than drinking and cooking. The town installed a new main water pipe. EPA's removal action included connecting the trailer park residences to the town's main water supply and supplying bottled water to the trailer park's residents for two months. Removal action was completed in approximately two months.

(2) Drinking Water Contamination of Private Wells

Contamination of drinking water wells was discovered by the State during routine sampling of the wells. Area residents were advised by the CDC and the local health department not to use well water for drinking, cooking, or bathing. Use of the wells was expected to cause the contaminants to move more quickly through the aquifer. The hazardous materials in the drinking water included solvents and volatile organics. The source of the contamination was unknown even after extensive investigation. The threats were groundwater and drinking water contamination and direct contact. EPA and the county undertook removal actions to provide alternate water supplies. EPA paid for half of the waterline and provided service hookups for affected residents and capped old and contaminated wells. Action was completed in less than seven months.

(3) Water Contamination from Underground Chemical Storage Tanks

Reports of chemical odors eminating from a cave led to an investigation that discovered a contaminated farm pond. Water from the pond was discharging into a sink hole and then migrating to the cave. A removal action was approved for treatment of the pond water through aeration and activated carbon filtration. Further investigation revealed underground chemical tanks as the source of contamination. The responsible party agreed to relocate the tanks and treatment of the pond water was completed in nine weeks.

APPENDIX 5

DECISION RATIONALE

DECISION RATIONALE

A decision to undertake a CERCLA-financed removal must be able to withstand the scrutiny of investigations by the Inspector General or Congress and must be defensible in Federal government proceedings for cost recovery and other challenges to the selection of a removal action. In order to meet these objectives, response personnel must maintain a written record demonstrating that their decisions are consistent with CERCLA and the NCP, and are in accordance with program delegations, policies and procedures.

The removal Action Memorandum is the primary mechanism for documenting the need for a CERCLA-financed removal. This memorandum describes the basic characteristics of the incident; evaluates the extent and urgency of the threat to health and the environment; and identifies previous, current or planned enforcement or non-Federal response actions. Finally, it describes proposed CERCLA actions, their anticipated effectiveness and their costs. Appendix 6 contains a model Action Memorandum that OSCs may find helpful.

The decision rationale presented below is designed to ensure that response personnel prepare thorough, complete Action Memoranda. It consists of a series of questions designed to identify data needs and organize and analyze information from the initial screening and preliminary assessment. The questions incorporate the key provisions of the NCP as well as new requirements such as the policies on off-site disposal, compliance with other environmental statutes and wetlands/floodplains. The rationale used by Agency officials for these criteria must be documented in the Administrative Record, if not included in the Action Memorandum.

Because removals vary in urgency, the decision rationale is organized into two major sections, a screen for time-critical events and an evaluation of less urgent removal incidents. This distinction is necessary in order to determine the following:

- Activation of the OSC's $50,000 authority
- Extent of PRP search and notification
- Selection of organizational lead and contractor support for removals at NPL sites
- Compliance with other environmental statutes
- Compliance with OSWER's policy on off-site disposal.

Moreover, although all incidents require the same basic evaluation, e.g., extent of threat and likelihood of non-Federal response, the decision rationale recognizes that in time-critical situations, decisions often must be based on limited data. Thus, the questions included in the time-critical screen represent the basic ones that OSCs must document for all removals and are most likely to be able to answer with limited data. The questions in the non-urgent incident evaluation are in addition to those in the time-critical screen and provide for a more detailed analysis based on the availability of more data.

I. SCREEN FOR TIME-CRITICAL REMOVALS

In time-critical removals, the preliminary assessment phase of response may, by necessity, be very short, (e.g., a few hours); be based primarily on existing data and allow for little or no new sampling.

Despite the urgency of the situation, response personnel must ensure that decisions to initiate CERCLA removals, as well as decisions regarding the scope of work, are consistent with all statutory and regulatory requirements, delegations of authority and provisions of program policy and guidance. If OSCs activate their $50,000 authority, for example, they must demonstrate in the removal Action Memorandum that the incident was a classic emergency or involved actual or potential injury, death or catastrophic environmental damage from releases at inactive facilities or waste sites. Documentation is also required for any exemption from the off-site or environmental compliance policies and for decisions to initiate removal action prior to issuing verbal or written notification to PRPs.

A. Incident Characteristics

The purpose of this set of questions is to enable response personnel to provide a foundation for demonstrating that the incident already has posed or imminently will pose an imminent and significant danger to the public or to the environment. In compiling this information, the OSC should consider the availability of pictures, diagrams, maps and/or sketches that may assist in clearly describing the release and defining the threat.

- Location and site use: What is the location (e.g., proximity to major thoroughfares, streams, sensitive populations, significant natural resources); current use (e.g., recreation, residential, industrial) and former use (e.g., pesticide formulating facility)?
- Type of release: Is it a newly discovered old release? How did the release occur (e.g., transportation, fire, explosion)?
- Extent of release: Is it widespread and/or migrating rapidly?

B. Materials

In addition to location and the type and extent of the release, the specific types of materials present may affect the relative urgency of the situation. Within the limits posed by the exigencies of the situation, the OSC should try to be as specific as possible in identifying the types of substances and their quantities. If time permits, the OSC should contact other EPA offices (e.g., the Office of Drinking Water, the Office of Air Quality Planning and Standards) and other Federal agencies (e.g., the Agency for Toxic Substances and Disease Registry) to assist in this effort and the evaluation of threat (see Section I.C).

- What types of substances are present (e.g., volatile organics, metals) and how was the determination made (e.g., labels on drums, portable air monitoring device)?

- What are the estimated quantities already released or likely to be released? Are they reportable quantities? Are they quantities that exceed standards under any environmental or health laws (e.g., the National Emission Standards for Hazardous Air Pollutants (NESHAPs) under the Clean Air Act or effluent guidelines under the Clean Water Act)?

C. Threats

The threats analysis, together with the information compiled in Sections I.A and I.B of this appendix, provides the foundation for determining the timing of response discussed in Section I.D and thus the applicability of various program authorities and policies.

- Health threats: Are there confirmed reports of illness, injury or death? What kind of human exposure occurred (e.g., inhalation, ingestion, skin contact) and what was the pathway (e.g., drinking water, food, air emissions)? Are more injuries or deaths imminent from the exposure to date or anticipated exposure? How many people are affected and what kinds (e.g., children, nursing home residents)?

- Environmental threats: Are there confirmed reports of injuries to natural resources or injuries to or deaths of flora and fauna? Are more anticipated? How sensitive/critical are these resources (e.g., protected wildlife refuge)? Is there catastrophic environmental damage?

- Compliance with other environmental laws: What laws or regulations exist that set standards or other mechanisms for determining the extent of threat? What data are available to compare the incident with those statutory and regulatory provisions (e.g., ground-water monitoring data to compare to removal program drinking water action levels or the 10-day drinking water health advisory?)

- Off-site disposal: Are the threats posed by the substances at the site such that off-site removal is necessary and outweighs the risk of transportation and ultimate disposal or treatment elsewhere? Is this because of the toxicity/carcinogenicity of the substances? Because of the proximity of humans? Because of the immediate potential for migration? Or for some other reason?

D. Timing of Response

- Is immediate response (e.g., hours) necessary?
  - If so, and there are reports of illness, injury or death, OSCs may exercise their $50,000 authority.

- Must response start within one week?
  - If so, OSCs may initiate response without issuing notice letters, provided this adheres to Regional enforcement protocol.

In making the above determinations, OSCs should provide the following documentation:

- For actual releases, what are the likely additional threats to health or the environment if action is not taken within the specific time frame?
- For threatened releases, what are the indications that a release is imminent? How will the situation deteriorate if response is delayed?
- Are there any private parties, or State or local agencies willing and able to cleanup immediately?

II. EVALUATION OF TIME-CRITICAL INCIDENTS

If the incident does not appear to require immediate response, the OSC is expected to conduct a longer, more detailed preliminary assessment to obtain reliable, high quality data with which to more completely document the actual or potential health and environmental threat. For example, the OSC is expected to collect whatever data are essential to demonstrate whether the incident exceeds health and environmental standards set forth in other environmental laws and statutes (NOTE: the exigencies of a time-critical incident may not have permitted the collection of sufficient data to conduct a thorough analysis of other environmental statutes). In addition to documenting the threat in more detail, response personnel also are expected to spend a greater amount of time and effort to ensure that a more detailed PRP search, notification and negotiation is conducted.

A. Detailed Health Threat Assessment

The removal program is designed to protect the public health. Even incidents that are not extremely urgent often warrant CERCLA-financed removal action because they pose health threats that no non-Federal party is prepared to address or that are too serious to await the selection and implementation of final remedial measures.

- What additional information is available about the released substances (e.g., more extensive or higher quality ambient data; excedance of any Federal or State health-related criteria, standards, advisories)?
- What will happen to the extent of release and severity of the threat if response is delayed pending consideration for the NPL or the initiation of remedial measures at NPL sites?

B. Detailed Evaluation of Environmental Threat

The removal program addresses environmental as well as health threats. Some environmental threats are not urgent, but nevertheless are significant. The series of questions below is designed to enable response personnel to demonstrate that either failure to respond or to delay response pending listing on the NPL or initiation of remedial measures at sites already on the NPL will create an unacceptable impact on natural resources and the environment.

- What additional information (beyond that requested in the time-critical screen) documents the threat to the environment (e.g., monitoring or other data verifying injury to or destruction of natural resources, critical habitats)?
- What are the known short- and long-term effects that are likely if there is no response or response is delayed? When is that threat likely to manifest itself?

C. Potential For Non-Federal Action

EPA policy is to reserve CERCLA-financed removal action for those situations in which there is no viable non-Federal response. Section 300.65(a)(2) of the NCP specifically requires that an initial effort be made to identify and have potentially responsible parties perform response to the extent practical considering the exigencies of the circumstances, and section 300.65(b)(2) includes "availability of other appropriate Federal or State response mechanisms" as a criterion for selecting a CERCLA-financed removal. Thus, OSCs must demonstrate that they have taken all available steps to promote State or local response and/or to identify, notify and compel response by potentially responsible parties. OSCs should be prepared to answer the following series of questions in their Action Memoranda, POLREPs or other site-related records.

1. Private Party Response

- Is the PRP known? Has the PRP taken action? If so, why was the action not adequate? What steps are being/have been taken to obtain further PRP response? If the PRP has not taken action, what steps have been taken to compel such action (e.g., has EPA issued a notice letter or verbally contacted the PRP)?
- If the PRP is not known, what is the status of a search? What attempts have been made to locate the PRP (e.g., verbal inquiries on- and off-site)?

2. State and Local Response

- What action has the State or locality taken to date (e.g., response, enforcement)? What actions are

State/local officials currently taking or planning to take? Why and how are these actions insufficient, thereby necessitating activation of CERCLA (e.g., the State does not have expertise, equipment, manpower, emergency contracting authority)?

- How can the State or locality support a CERCLA-financed response (e.g., site security, specialized services under a letter contract)?

D. Review and Selection of Response Actions

Although removal actions are not required by statute to meet a formal test for cost-effectiveness, all response actions must be fiscally responsible and, to support cost recovery, must be consistent with the NCP. In addition, certain non-urgent removals at NPL and non-NPL sites will be subject to an engineering evaluation/cost analysis to ensure that the most effective measure is selected for a reasonable price. Guidance on the preparation of this analysis is now being developed by OSWER. In the meantime, OSCs should consider the following series of questions in analyzing alternatives and designing a scope of work for the removal action.

- What types of actions does section 300.63(c) of the NCP recommend for this type of situation? Are these actions really appropriate for this specific situation? What others are appropriate and why (e.g., cite program guidance on alternative drinking water or other situations)?

- For the selected removal actions, what is their probable effectiveness in mitigating/abating the threat?

- What is the probable duration of the selected actions? CERCLA limits removals to twelve months unless one of the two exemptions set forth in section 104(c)(1), as amended by SARA, are met. Therefore, if the action is expected to exceed twelve months, but otherwise qualifies for removal action under CERCLA, the NCP and program policy, the Action Memorandum should include a request for a twelve-month exemption.

- What is the anticipated cost of the selected actions? The Action Memorandum should break costs down by the cost components cited in chapter III and in the model Action Memorandum in Appendix 6. Additional guidance can be found in the Removal Cost Management Manual. If the cost is known at the outset to exceed $2 million, the Action Memorandum should include a request for an exemption from the statutory limit and must demonstrate adherence to one of the two exemptions in section 104(c)(1) of CERCLA, as amended by SARA.

APPENDIX 6

INITIAL ACTION MEMORANDUM FOR REMOVALS LESS THAN TWELVE MONTHS AND $2 MILLION (MODEL)

MODEL INITIAL ACTION MEMORANDUM FOR REMOVALS LESS THAN TWELVE MONTHS AND $2 MILLION

Below is a recommended format for OSCs to follow in preparing their removal Action Memoranda. While use of this model format is not mandatory, OSCs must cover all of the topics presented in the model in order to demonstrate that the incident meets the removal criteria of section 300.65 of the NCP and that all actions in the scope of work are consistent with both CERCLA, as amended by SARA, and the NCP. SARA raised the statutory limitations for removal actions from six months and $1 million to twelve months and $2 million. SARA also established a new requirement that all removal actions contribute, to the extent practicable, to the efficient performance of any long-term remedial action performed by EPA, the State, the locality, or a private party. OSCs must include in the Action Memorandum a discussion of how the proposed removal action contributes to the long-term efficiency of ongoing or future remedial actions, whether Federal, State or PRP. In addition, OSCs should attach to their removal Action Memoranda all appropriate ATSDR Health Advisories.

The structure of the recommended format is a representative sample of the type of Action Memoranda frequently prepared by the Regions. In addition to this sample format, OSCs are encouraged to use the Decision Rationale (Appendix 5) as supplemental guidance in preparing a request for removal actions. When it is initially known that the removal action will exceed the $2 million limitation, OSCs should prepare an initial Action Memorandum and $2 million exemption request in accordance with Appendix 7.

I. HEADING

DATE: Month/Day/Year

SUBJECT: Request for Removal Action Approval at the Site, City, State
ACTION MEMORANDUM

Site/Spill-ID:

Category of Removal: All removal actions are considered time-critical unless otherwise indicated (e.g., classic emergency or non-time-critical)

National Significance: Indicate whether the removal is of national significance

FROM: On-Scene Coordinator

TO: Regional Administrator (or to the file, thru the RA, if the response is initiated under the OSC's $50K authority and will not exceed that cost)

THRU: Regional Division Director, as appropriate

II. ISSUE

Briefly state that the site meets the criteria for initiating a removal action under section 300.65 of the NCP and is anticipated to require less than twelve months and $2 million for completion.

III. BACKGROUND

The background section should contain information on the location of the site, the incident characteristics (including the history of the site, general character of the site, and issues relevant to waste management), summary of quantity and types of substances present, State and local authorities' role, and actions to date, including previous and current actions to abate threat. Each of these information points is described below.

A. Site Description

1. Describe the site's physical location.

Give distances from nearest populations and points of reference, as appropriate. Also state the population size. For example, a school is within one-quarter of a mile and there are 1,000 residences within a mile of the site; ten of these residences are adjacent to the site. The area is mainly suburban residential with some industrial areas.

Describe the areas adjacent to the incident or site in terms of nearby vulnerable or sensitive populations, habitats and natural resources. For example, the site is adjacent to wetlands and a tributary to the river flows nearby. Describe how sensitive areas, such as floodplains, could impact the removal.

Describe any areas protected by statute, such as parks, historic sites, and sensitive ecosystems and cite the statute. This may include areas such as the New Jersey Pinelands, wetlands areas, or wild and scenic rivers.

2. Discuss the general character of the site.

Describe the current use of the site (e.g., active facility, vacant lot, or recreational area). Also describe the nature and type of the facility or vessel, as well as the business activities undertaken at the site that may have contributed to the incident (for example, a sanitary landfill that accepted industrial wastes or a midnight dump of PCB wastes).

Describe any existing structures, measures, or conditions that would either mitigate or accelerate the release of any materials on-site (e.g., an unstable dike, a temporary containment system, adverse weather conditions, site security, fencing, condition of containers and similar situations). State whether the release is widespread and/or is migrating rapidly.

Include any pertinent information on the site's owners, past and present. This should reflect information on whether the current or previous owners contributed to the conditions on-site. Note whether this is the first removal at the site or is a restart.

3. Indicate NPL status.

Indicate whether the site is on the NPL. If the site is on the NPL, then state when remedial action is expected. If the site has not been promulgated on the NPL, indicate whether it has received an HRS rating, is likely to be proposed or already has been proposed for inclusion on the NPL. Indicate if the site has appeared on the NPL, but that no remedial action is to be taken (e.g., because of removal or PRP response).

4. Provide supporting documentation.

Pictures, diagrams, maps, and/or sketches are encouraged if they substantiate OSC findings. They may be included as attachments or incorporated into the text. This documentation may help to substantiate the threat at the site.

B. Incident/Release Characteristics

Discuss the history of the incident or release. Describe the type of incident that occurred (e.g., a classic emergency) and why it occurred. For example, a storage lagoon overflowed due to heavy rains. Be sure to list all of the site's key problem areas (e.g., drums, bulked liquids, lagoons, or contaminated soils).

Describe the exact location of the incident at the site. For example, the release occurred at an overflowing lagoon in the south corner of the site. Include the time and date (if known) of the incident. State whether the release is new or has just recently been discovered. Also describe when and how the incident was discovered. For example, drums washed up on the beach and were discovered by park rangers.

C. Quantities and Types of Substances Present

1. **Describe the hazardous substances in terms of categories or classes of chemicals.**

List all materials known on site at the time of the approval request and indicate whether these materials are hazardous substances or are pollutants or contaminants. Sections 104(a)(1)(A) and (B) of CERCLA state the different criteria that are used depending on whether the release is a hazardous substance or a pollutant or a contaminant (NOTE: pollutants and contaminants must pose an imminent and substantial danger in order to elicit CERCLA response). Also highlight any substances of critical concern (e.g., PCBs, dioxins). If this information is provided in chart form, identify in column format the substance, quantity, location (e.g., well #1) and existing standards (e.g., DWEL), if there are any, for comparison. Later discussion of threats should refer to, not duplicate, the information on this chart.

Describe briefly the results of the sampling (e.g., most affected residences showed elevated levels of trichloroethylene in tap water) and give estimates of quantities of the classes of materials if they are available (for example, 220,000 ppm of PCBs in the soil). Indicate whether they are "reportable quantities" as set forth in 40 CFR 302.

CERCLA's definition of "hazardous substance" in section 101(14) includes substances designated or toxic pollutants listed in sections 311(b)(2)(A) and 307(a) of the Federal Water Pollution Control Act; any hazardous air pollutant listed under section 112 of the Clean Air Act; and substances with respect to section 7 of the Toxic Substances Control Act and section 3001 of the Solid Waste Disposal Act. In addition, categories of hazardous substances are listed in Appendix VIII of RCRA, "Hazardous Constituents" and in 40 CFR Table 302.4 "List of Hazardous Substances and Reportable Quantities."

2. Describe the sampling methodology.

Briefly describe the sampling methodology as well as methods for maintaining consistency, reliability and quality control. Mention who performed the data collection and the lab analysis (e.g., EPA, contractor, local health authorities). Indicate the time frame in which the samples were taken.

D. State and Local Authorities' Roles

1. Briefly describe State and local actions to date.

State whether State and/or local governments requested EPA assistance and the name of specific agencies/officials making the request. Summarize any "first-responder" or other actions these or other agencies have taken to protect public health and the environment (e.g., evacuated individuals within one square mile, posted police to restrict public access). Provide the dates for and indicate the effectiveness of such actions. Indicate State/local cooperation in assessing the release and threat and whether State and local government personnel remain at the site.

2. Summarize the potential for continued State and local response.

Describe any actions State and local government personnel are currently taking and their anticipated future roles. Examples of roles could be providing site security or hookups to the water main. Indicate whether the State mechanism for obtaining funding is available, is depleted or will require delaying the response for an unacceptable period of time given the threat. Indicate whether the State/locality will fund these activities or require funding under a letter contract. Indicate whether the State is going to lead the response and enter into a Cooperative Agreement. This is most likely to occur for non-time-critical removals at NPL sites, although Cooperative Agreements also may be executed for removals at non-NPL sites. Indicate if the State or locality wants to be reimbursed for participation in response actions under SARA section 123.

E. Other Actions to Date

1. Discuss any previous actions to abate threat.

Describe any Federal or privately-sponsored activities that have been performed and are not previously described. Give the dates, costs, and effectiveness of such actions. Indicate if response has been initiated under OSC's $50,000 authority. Actions to abate the threat may include advice from the locality advising residents not to drink their water. Other actions may include the provision of bottled water.

2. Discuss any current actions to abate threat.

Any Federal or privately-sponsored activities that are currently underway (but not previously discussed) should be described. This information should include estimated costs and completion dates of these activities. Discuss how proposed EPA actions will interrelate with current activities.

IV. THREAT TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT

Section 300.65(b)(2) of the NCP combines three previously distinct types of Superfund responses into the category of "removals": immediate removals, planned removals and initial remedial measures. Removals address two distinct requirements. The first is a threat to the public health, welfare and environment. The second requirement is the availability of non-CERCLA response mechanisms. The following threats are considered in determining the appropriateness of a removal action:

- Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations, animals, or food chain;
- Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
- Threat of fire or explosion;

- The availability of other appropriate Federal or State response mechanisms to respond to the release;

- Other situations or factors which may pose threats to public health or welfare or the environment.

OSCs should make sure that their Action Memoranda discuss the ways in which the release meets these NCP criteria. Sections A and B below provide some specific examples of the type of material to include.

A. Threats to Public Health and Welfare

Describe the threats to public health and welfare. List all of the current and potential threats, starting with the most serious, that adversely affect human health or welfare (e.g., fire/explosion, drinking water contamination). Identify any human exposure that already has occurred, the kind of exposure (e.g., inhalation, ingestion, dermal contact) and the exposure pathway (e.g., food supply, water supply, indoor air pollution). Describe any reports of illness, injury or death that appear to be linked to the exposure. Be as specific as possible about the number of individuals exposed, the proximity of sensitive populations (e.g., hospitals, schools), the geographic area affected and whether exposure was acute or chronic. Also describe any anticipated exposure and whether it is imminent.

Describe all actual and potential impacts on human health and welfare. Describe any known effects of human exposure to the chemical released (e.g., nausea, respiratory dysfunction, cancer) and any actual or projected manifestations of these effects.

Compare amounts of hazardous substances shown to background or health standards as appropriate. If a chart is provided in Section III.C.1, it should be referenced, not duplicated, here. It may be necessary to consult policy on compliance with other environmental statutes. This policy may be found in OSWER directive #9234.0-05, "Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements" (July 9, 1987). If written ATSDR or other health advice is given, include this as an attachment to the Action Memorandum. The health advice should also be referenced in the discussion. If health advice is given orally, it should be documented in the Action Memorandum.

B. Threats to the Environment

Describe threats to the environment. List all the current and potential threats, starting with the most serious, that adversely affect the environment (e.g., damage to ecosystem, animals, ground water). Identify any natural resource or environmental damage that already has occurred and the extent of exposure (e.g., acute or chronic). Indicate whether there have been reports of deaths of flora or fauna (e.g., fish kills). If so, state how much environmental damage has occurred (e.g., 20,000 acres of wetlands contaminated or 1 million fish killed). Discuss potential damage to the environment and indicate a time frame within which damage will occur if response actions are not taken.

Discuss all actual and potential impacts on the affected area. Describe any anticipated exposure and whether it is imminent. Indicate whether the release threatens endangered species, critical wetlands, or other resources protected under law. State whether natural resources trustees have been notified.

V. ENFORCEMENT

The purpose of this section is to assist in making the determination of the potential for response action by PRPs. This information should be referenced here as "see attachment" and placed on a separate page entitled "Enforcement Sensitive." This section includes information on the enforcement strategy (summarized), the status of notice letters or 106 orders and/or negotiations, the available enforcement authority, potentially responsible parties, previous enforcement actions, the probability of recovering costs and the recommended enforcement strategy if there is no strategy currently in place. This section also should contain information on the potential for responsible party response. In some Regions, this section of the Action Memorandum may be prepared by enforcement personnel.

A. Enforcement Strategy

1. Briefly summarize the enforcement strategy.

Summarize the enforcement strategy for notifying, negotiating with, and litigating against responsible parties. Indicate whether the State or Federal enforcement attorneys are actively pursuing informal negotiations, are actively pursuing litigation, or have decided to postpone or forgo litigation (e.g, no enforcement actions are currently underway or the RP has agreed to a cleanup). Describe what enforcement actions are planned (e.g., negotiations or Administrative Orders).

If an enforcement strategy has not yet been developed, describe the strategy that is recommended by the Regional enforcement attorney. For example, discuss any decisions to pursue Federally-funded action or continue litigation or negotiations. Indicate whether concurrence to proceed with removal is conditional. If so, state the conditions.

2. Briefly summarize the enforcement actions.

Indicate if litigation is proceeding or is contemplated. Cite under what statutory authority the action will be or is being taken (e.g., RCRA section 7003, CERCLA).

B. Status of Enforcement Actions

1. Potentially responsible parties.

Describe the number and types of potentially responsible parties (e.g., transporters and owners or operators of production facilities or waste disposal facilities). Indicate whether the PRP is known. If a site has one or two primary responsible parties, they may be named. If a search has been completed, the results should be summarized.

Indicate if the PRP has taken action. If so, mention whether or not the action was adequate. Indicate whether the PRP is financially capable and likely to act within a time frame that adequately protects public health and the environment. Cite, do not repeat, descriptions of PRP actions discussed previously in the request.

Describe what efforts are being undertaken to obtain additional PRP response. Discuss the status of the potentially responsible party search. Mention if search efforts are underway and whether there is time to continue the search before response must begin. If not, indicate that PRP search will continue as the removal proceeds and a PRP may later take over removal actions. Describe the attempts that have been made to locate PRPs (e.g., oral inquiries both on and off site). Include whether the PRP has been notified (e.g., orally contacted, written follow-up).

Give the date(s) that notice letter(s) were sent and a summary of the responses of the recipients (e.g., the PRPs have agreed to clean up the site or the PRPs have denied involvement at the site). If negotiations are underway, describe the activities under discussion.

2. Discuss the probability of recovering costs.

Estimate the solvency of the major responsible parties. Evaluate the ability to obtain the necessary actions in a timely fashion through litigation. This should be included if it explains why actions are being requested of the EPA when responsible parties are financially able to undertake these actions.

VI. PROPOSED ACTIONS AND COSTS

The purpose of this section is to provide guidelines for presenting information on proposed and alternative actions, estimated costs and the project schedule. Also included is information on how the action addresses the threat.

A. Proposed Actions

1. Describe the proposed actions and what they will accomplish.

Describe the specific tasks involved and the results sought by the removal action as they pertain to the threat(s) discussed in Section III of this model Action Memorandum. For example, "The primary objective of the proposed action is the mitigation of the direct contact threat to nearby residents by provision of alternate potable water supplies to the affected homes." The NCP provides examples of types of action that may be taken for this type of incident. The list in the NCP is not exhaustive, however, and actions are not limited to these examples.

Describe the procedures to be undertaken in the proposed actions. For example, "A two-phase removal action is planned. The first phase is the installation of activated carbon columns. The second phase is the installation of water mains and hookups to public water supply." Describe any impediments to the proposed action (e.g., lack of public acceptance or problems with access).

If off-site storage, treatment or disposal is proposed, indicate the amount or type of waste(s) requiring off-site treatment or disposal, the facility selected and the extent to which the substance can be treated. In cases where the type or amount of waste is not available for inclusion in the Action Memorandum, indicate the intent to comply with all requirements of the Off-site Policy. For detailed information on the Off-site Policy, OSCs should refer to Chapter IV of the Superfund Removal Procedures manual.

Indicate whether any further information is needed before all response actions can be decided (e.g., sampling to address ground-water or drinking water contamination or a RCRA permit and compliance verification are needed for selecting the disposal option).

State why proposed actions are appropriate for this situation and explain the rationale for choosing this option. Describe the technical feasibility and probable effectiveness of the proposed action. Address intermedia relationships, temporary versus long-term solutions, and adverse impacts.

2. Provide a discussion of how the proposed actions will contribute to the efficient performance of long-term remedial actions.

For all removals, discuss how, to the extent practicable given the exigencies of the situation, the proposed actions will contribute to the efficient performance of long-term remedial actions. The primary objective of this provision is to avoid the need for removal restarts. The following questions should be considered when preparing this discussion:

- What is the long-term cleanup plan for the site?
- Which threats will require attention prior to the start of the long-term action?
- How far should the removal action go to assure that the threats are adequately abated?
- Is the proposed removal action consistent with the long-term remedy?

For additional guidance on this requirement, see OSWER directive #9360.0-131, "Guidance on Implementation of the 'Contribute to Remedial Performance' Provision."

If no remedial plans are available, describe how proposed removal actions are consistent with the remedial actions that would be expected to be undertaken based on site conditions. Discussion should be based on best professional judgement using the information available. In-depth analyses of remedial actions are not required. For example, indicate that the proposed actions will address near-term threats that may require attention prior to the start of remedial action as well as more urgent threats. Also discuss how, wherever appropriate, removal actions will provide a suitable foundation for future remedial actions. In general, removal actions should not interfere with future remedial actions, nor should proposed actions eliminate any feasible remedial alternatives.

3. Describe the project schedule.

Give the time frame needed to stabilize or clean up the site and include how quickly response can begin. Give the estimated period of performance. State whether the proposed action will exceed twelve months. (Note: Previous actions count toward the twelve-month and $2 million limits.) If the twelve-month clock has started, state when the twelve months end.

If the proposed action is expected to exceed the twelve-month statutory limit, then a twelve-month exemption request approved by the RA should be included this removal Action Memorandum. If post removal site control will be required, the State or other authority must provide it. Indicate a commitment to provide post removal site control.

4. Describe alternative actions considered.

Describe other actions considered (e.g., providing hookups to city water instead of providing bottled water, alternatives to off-site disposal). Briefly describe the technical feasibility and probable effectiveness of each alternative. Address intermedia relationships, temporary versus long-term solutions, and possible adverse impacts. State any impediments to each alternative, e.g., public acceptance or access to the site. Give the estimated period of performance for alternative actions. State how quickly response can begin. State the duration of the alternative. State whether it will exceed twelve months. For example, "The first phase should be completed within approximately 3 weeks of initiation of the action. The second can be expected to be completed by July 1988." Give further detail for each component of the phases. State whether post removal site control will be required and who would provide it or if this would be an impediment to cleanup or stabilization of the site.

B. Estimated Costs

Detail the estimated total project ceiling and an itemized breakdown of the following cost categories that comprise that ceiling. This includes extramural cleanup costs allowed under the RA's $2,000,000 authority (which consist of cleanup contractor costs, letter contracts with States and other commercial entities, and site-specific IAGs); TAT costs; EPA intramural costs; National Contract Lab Program analytical costs; and ERT/REAC costs. If applicable, include the cost of previous removal actions taken at the site. An example is provided on the following page.

Summary of Costs		Estimated Costs
Extramural Costs		
Extramural Cleanup Contractor (includes ERCS, Mini-ERCS, Subcontractors, Letter Contracts, Alternative Technology Contracts, IAGs with other Federal agencies, etc.; contingency can be 10-20%.)	 (15% contingency)	$711,450 125,550 837,000
TAT costs		10,000
CLP analytical services		20,000
ERT/REAC		20,000
Subtotal Extramural Cost		887,000
15% Contingency of above costs (round to nearest thousand)		133,050
Total Extramural Cost		$1,020,050
Intramural Costs		
Intramural Direct Labor (HQ, ERT and Region)		19,000
Intramural Indirect Costs*		33,000
TOTAL PROJECT CEILING ESTIMATE		$1,072,050

If CERCLA funds have been obligated for past actions, then indicate the obligations:

TOTAL PROJECT CEILING REQUESTED	$1,072,050
Previous Removal (1982) Obligations	200,000
TOTAL CEILING TO DATE	$1,272,050

A statement of obligations is necessary because these costs count toward the $2 million limit.

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* Formula for calculating indirect costs:

Region-Specific Indirect Cost Rate X Estimated Regional Direct Labor Hours = Indirect Costs

Regional indirect cost rates may be found in the Comptroller Policy Announcement No. 87-15, "New Method for Determination of Indirect Costs in Superfund Removal Project Ceilings" (7/15/87).

VII. EXPECTED CHANGE IN THE SITUATION SHOULD NO ACTION BE TAKEN OR ACTION BE DELAYED

Describe any expected changes in the situation should no action be taken or action be delayed. Include a description of a worst-case scenario should no action be taken. These changes may include:

- Spread in scope of contamination. For example, the ground-water contaminant plume may spread through a larger area.
- Change in nature of contamination. For example, incompatible substances may come into contact with each other, producing added threats such as fire/explosion or formation of poisonous gases such as hydrogen cyanide.
- Increased threat to human health and the environment if action is delayed or denied. For example, the contaminant plume may soon reach drinking water wells or phosphine gas or other poisonous gas may be produced.
- Additional response actions required if the initial response is delayed or denied resulting in a longer, more costly removal. For example, the drums will deteriorate further, leaking additional contaminants into the ground.

VIII. IMPORTANT POLICY ISSUES (Only as necessary and applicable)

If applicable, include a separate section on important policy issues that are significant to this request. These issues may include:

- Provision for cost sharing (cost sharing is applicable only in a small number of cases and applies only to removals at NPL sites that were publicly operated, either by a State or a political subdivision thereof, at the time of a release and a remedial action is ultimately undertaken at the site)
- The division of responsibilities among Federal and/or State agencies
- Off-site disposal availability and compliance with OSWER's Off-site Policy
- Compliance with other environmental statutes
- Special coordination needs/issues of national significance (e.g., dioxin) and similar issues
- Noncontiguous sites (if multiple locations are recommended by the Region for consideration as one site, give justification for such consideration).

Issues should be fully explained and include a discussion on the efforts being made to resolve the issue and/or decisions that must be made before a resolution is reached.

IX. RECOMMENDATION

The purpose of this section is to briefly present the Region's recommendations, rationale and projected costs for the action. For example, "Because conditions at the site meet the NCP section 300.65(b)(2) criteria for a removal, I recommend your approval of the proposed removal action. The total project ceiling is \$X, of which \$Y are for extramural cleanup contractor costs (Regional allowance). I recommend your approval to initiate response actions due to the nature of the threat described herein."

Approved: ______________________________ Date: ____________
(Name and Title)

Disapproved: ___________________________ Date: ____________
(Name and Title)

Attachments

APPENDIX 7

INITIAL ACTION MEMORANDUM AND $2 MILLION EXEMPTION REQUEST (MODEL)

MODEL OF AN INITIAL REMOVAL MEMORANDUM REQUESTING A $2 MILLION EXEMPTION

The purpose of Appendix 7 is to provide OSCs with a sample format that can be easily followed to prepare an initial removal Action Memorandum that includes a request for an exemption from the $2 million limitation. While the use of this model format is not mandatory, OSCs must cover all the topics presented in the model in order to demonstrate that the incident meets the removal criteria of section 300.65 of the NCP and that all actions in the scope of work are consistent with both CERCLA, as amended by SARA, and the NCP. OSCs must also document that the threat meets the exemption criteria set forth in CERCLA, as amended by SARA.

The CERCLA Amendments added a new independent exemption that permits an exemption to the statutory limitations on cost and duration whenever a continued removal action is determined to be otherwise appropriate and consistent with remedial action to be taken. This new exemption (consistency exemption) applies to NPL sites and sites proposed for the NPL, and to non-NPL sites only in limited circumstances. SARA also established a new requirement that all removal actions contribute, to the extent practicable, to the efficient performance of any long-term remedial action performed by EPA, the State, the locality or a private party. OSCs must include in the Action Memorandum a discussion of how the proposed removal action contributes to the long-term efficiency of ongoing or future remedial actions, whether Federal, State or PRP. In addition, OSCs should attach to their Action Memoranda all appropriate ATSDR Health Advisories.

The structure of the recommended format is a representative sample of the type of Action Memoranda frequently prepared by the Regions. In addition to this sample format, OSCs are encouraged to use the Decision Rationale (Appendix 5) as supplemental guidance in preparing a request for removal actions.

I. HEADING

DATE: Month/Day/Year

SUBJECT: Request for Removal Action Approval and Exemption from the $2 Million Limit at Site, City, State
ACTION MEMORANDUM

Site/Spill-ID:

Category of Removal: All removal actions are considered time-critical unles otherwise indicated (e.g., classic emergency or non-tme-critical)

National Significace: Indicate whether the removal is of national significace

FROM: Regional Administrator

TO: Assistant Administrator for Solid Waste and Emergency Response

THRU: Director
Office of Emergency and Remedial Response

ATTN: Director,
Emergency Response Division

II. ISSUE

Briefly state that the site meets the criteria for initiating a removal under section 300.65 of the NCP and one of the two exemptions for exceeding the statutory limits under section 104(c) of CERCLA, as amended. Indicate which of the 104(c) exemptions the site meets. Exemption from the $2 million statutory limit requires AA, OSWER approval. This authority may be redelegated to the RA on a case-by-case basis.

III. BACKGROUND

The background section should contain information on the location of the site, the incident characteristics (including the history of the site, general character of the site, and issues relevant to waste management), summary of quantity and types of substances present, State and local authorities' role, cleanup timeframe, and actions to date, including previous and current actions to abate threat. Each of these information points is described below.

A. Site Description

1. Describe the site's physical location.

Give distances from nearest populations and points of reference, as appropriate. Also state the population size. For example, a school is within one-quarter of a mile and there are 1,000 residences within a mile of the site; ten of these residences are adjacent to the site. The area is mainly suburban residential with some industrial areas.

Describe the areas adjacent to the incident or site in terms of nearby vulnerable or sensitive populations, habitats and natural resources. For example, the site is adjacent to wetlands and a tributary to the river flows nearby. Describe how sensitive areas, such as flood plains, could impact the removal.

Describe any areas protected by statute, such as parks, historic sites, and sensitive ecosystems and cite the statute. This may include areas such as the New Jersey Pinelands, wetlands areas, or wild and scenic rivers.

2. Discuss the general character of the site.

Describe the current use of the site (e.g., active facility, vacant lot, or recreational area). Also describe the nature and type of the facility or vessel, as well as the business/activities undertaken at the site that may have contributed to the incident (for example, a sanitary landfill that accepted industrial wastes or a midnight dump of PCB wastes).

Discuss the relevant issues relating to current waste management practices. Describe any existing structures, measures, or conditions that would either mitigate or accelerate the release of any materials on-site (e.g., an unstable dike, a temporary containment system, adverse weather conditions, site security, fencing, condition of containers and similar situations). State whether the release is widespread and/or is migrating rapidly.

Include any pertinent information on the site's owners, past and present. This should reflect information on whether the current or previous owners contributed to the conditions on-site. Note whether this is the first removal at the site or is a restart.

3. Indicate NPL status

Indicate whether the site is on the NPL. If the site is on the NPL, then state when remedial action is expected. If the site has not been promulgated on the NPL, indicate whether it has received an HRS rating, is likely to be proposed or already has been proposed for inclusion on the NPL. Indicate if the site has appeared on the NPL, but that no remedial action is to be taken (e.g., because of removal or PRP response).

4. Provide supporting documentation.

Pictures, diagrams, maps, and/or sketches are encouraged if they substantiate OSC findings. They may be included as attachments or incorporated into the text. This documentation may help to substantiate the threat at the site.

B. Incident/Release Characteristics

Discuss the history of the incident or release. Describe the type of incident that occurred (e.g., a classic emergency) and why it occurred. For example, a storage lagoon overflowed due to heavy rains. Be sure to list all of the site's key problem areas (e.g., drums, bulked liquids, lagoons, or contaminated soils).

Describe the exact location of the incident at the site. For example, the release occurred at an overflowing lagoon in the south corner of the site. Include the time and date (if known) of the incident. State whether the release is new or has just recently been discovered. Also describe when and how the incident was discovered. For example, drums washed up on the beach and were discovered by park rangers.

C. Quantities and Types of Substances Present

1. Describe the hazardous substances in terms of categories or classes of chemicals.

List all materials known on-site at the time of the approval request and indicate whether these materials are hazardous substances or are pollutants or contaminants. Sections 104(a)(1)(A) and (B) of CERCLA state the different criteria that are used depending on whether the release is a hazardous substance or a pollutant or a contaminant (NOTE: pollutants and contaminants must pose an imminent and substantial danger in order to elicit CERCLA response). Also highlight any substances of critical concern (e.g., PCBs, dioxins). If this information is provided in chart form, identify in column format the substance, quantity, location (e.g., well #1) and existing standards (e.g., DWEL), if there are any, for comparison. Later discussion of threats should refer to, not duplicate, the information on this chart.

Describe briefly the results of the sampling (e.g., most affected residences showed elevated levels of trichloroethylene in tapwater) and give estimates of quantities of the classes of materials if they are available (for example, 220,000 ppm of PCBs in the soil). Indicate whether they are "reportable quantities" as set forth in 40 CFR 302.

CERCLA's definition of "hazardous substance" in section 101(14) includes substances designated or toxic pollutants listed in sections 311(b)(2)(A) and 307(a) of the Federal Water Pollution Control Act; any hazardous air pollutant listed under section 112 of the Clean Air Act; and substances with respect to section 7 of the Toxic Substances Control Act and section 3001 of the Solid Waste Disposal Act. In addition, categories of hazardous substances are listed in Appendix VIII of RCRA, "Hazardous Constituents" and in 40 CFR Table 302.4 "List of Hazardous Substances and Reportable Quantities."

2. Describe the sampling methodology.

Briefly describe the sampling methodology as well as methods for maintaining consistency, reliability and quality control. Mention who performed the data collection and the lab analysis (e.g., EPA, contractor, local health authorities). Indicate the time frame in which the samples were taken. Samples must be recent enough to substantiate an imminent threat in accordance with the original CERCLA section 104(c) exemption.

D. State and Local Authorities' Roles

1. Briefly describe State and local actions to date.

State whether State and/or local governments requested EPA assistance and name the specific agencies/officials making the request. Summarize any "first-responder" or other actions these or other agencies have taken to protect public health and the environment (e.g., evacuated individuals within one square mile, posted police to restrict public access). Provide the dates for and indicate the effectiveness of such actions. Indicate State/local cooperation in assessing the release and threat and whether State and local government personnel remain at the site.

2. Summarize the potential for continued State and local response.

Describe any actions State and local government personnel are currently taking and their anticipated future roles. Examples of roles could be providing site security or hookups to the water main. Indicate whether the State mechanism for obtaining funding is available, is depleted or will require delaying the response for an unacceptable period of time given the threat. Indicate whether the State/locality will fund these activities or require funding under a letter contract. Indicate whether the State is going to lead the response and enter into a Cooperative Agreement. This is most likely to occur for non-time-critical removals at NPL sites, although Cooperative Agreements also may be executed for removals at non-NPL sites. Indicate if the State or locality wants to be reimbursed for participation in response activities under SARA section 123.

E. Other Actions to Date

1. Discuss any previous actions to abate threat.

Describe any Federal or privately-sponsored activities that have been performed and are not described previously. Give the dates, costs, and effectiveness of such actions. Indicate if response has been initiated under OSC's $50,000 authority. Actions to abate the threat may include advice from the locality advising residents not to drink their water. Other actions may include the provision of bottled water.

2. Discuss any current actions to abate threat.

Any Federal or privately-sponsored activities that are currently underway (but not previously discussed) should be described. This information should include estimated costs and completion dates of these activities. Discuss how proposed EPA actions will interrelate with current activities.

IV. THREAT TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT

In situations where sites are initially found to meet both the NCP section 300.65 removal criteria and one of the two CERCLA section 104(c) exemptions to the statutory limitations, OSCs must demonstrate how the site meets both these requirements. If the site is expected to exceed the statutory limits based on the original 104(c) exemption OSCs should: 1) state in this section that the conditions at the site meet and exceed the 300.65 NCP removal criteria because of the existence of immediate threats and 2) demonstrate in Section V of this document that site conditions meet the original 104(c) exemption requirements. However, for those sites expected to exceed the statutory limits based on the new consistency exemption, OSCs must: 1) demonstrate in this section how the site meets the NCP section 300.65 removal criteria and 2) demonstrate in Section V of this document how the site meets the 104(c) consistency exemption.

Section 300.65(b)(2) of the NCP combines three previously distinct types of Superfund response into the category "removals": immediate removals, planned removals and initial remedial measures. Removals address two distinct criteria. The first is a threat to the public health, welfare and environment. The second criterion is the availability of non-CERCLA response mechanisms. The following threats are considered in determining the appropriateness of a removal action:

- Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations, animals, or food chain;
- Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
- Threat of fire or explosion;
- The availability of other appropriate Federal or State response mechanisms to respond to the release;
- Other situations or factors which may pose threats to public health or welfare or the environment.

OSCs should make sure that their Action Memoranda discuss the ways in which the release meets the NCP Section 300.65(b)(2) criteria. Sections A and B below provide some specific examples of the type of material to include.

A. Threats to Public Health and Welfare

Describe the threats to public health and welfare. List all of the current and potential threats, starting with the most serious, that adversely affect human health or welfare (e.g., fire/explosion, drinking water contamination). Identify any human exposure that already has occurred, the kind of exposure (e.g., inhalation, ingestion, dermal contact) and the exposure pathway (e.g., food supply, water supply, indoor air pollution). Describe any reports of illness, injury or death that appear to be linked to the exposure. Be as specific as possible about the number of individuals exposed, the proximity of sensitive populations (e.g., hospitals, schools), the geographic area affected and whether exposure was acute or chronic. Also describe any anticipated exposure and whether it is imminent.

Describe all actual and potential impacts on human health and welfare. Describe any known effects of human exposure to the chemical released (e.g., nausea, respiratory dysfunction, cancer) and any actual or projected manifestations of these effects.

Compare amounts of hazardous substances shown to background or health standards as appropriate. If a chart is provided in Section III.C.1, it should be referenced, not duplicated, here. It may be necessary to consult the policy on compliance with other environmental statutes. This policy may be found in OSWER directive #9234.0-05, "Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements (July 9, 1987). If written ATSDR or other health advice is given, include this as an attachment to the Action Memorandum. The health advice should also be referenced in the discussion. If health advice is given orally, it should be documented in the Action Memorandum.

B. Threats to the Environment

Describe threats to the environment. List all the current and potential threats, starting with the most serious, that adversely affect the environment (e.g., damage to ecosystem, animals, ground water). Identify any natural resource or environmental damage that already has occurred and the extent of exposure (e.g., acute or chronic). Indicate whether there have been reports of deaths of flora or fauna (e.g., fish kills). If so, state how much environmental damage has occurred (e.g., 20,000 acres of wetlands contaminated or 1 million fish killed). Discuss potential damage to the environment and indicate a time frame within which damage will occur if response actions are not taken.

Discuss all actual and potential impacts on the affected area. Describe any anticipated exposure and whether it is imminent. Indicate whether the release threatens endangered species, critical wetlands, or other resources protected under law. State whether natural resources trustees have been notified.

V. EXEMPTION FROM STATUTORY LIMITS

In order to obtain an exemption from the $2 million limit, the OSC must demonstrate in the Action Memorandum that the site meets one of the two CERCLA section 104(c) exemptions. Describe in detail how site conditions meet the exemption requirements listed below. In order to be granted an exemption, site conditions must either meet exemption A or B below. Include a description of worst-case scenarios to help substantiate the need for action. Be sure to note and include as attachments any appropriate ATSDR health advice memoranda or other data that substantiate the need to exceed the $2 million limitation. If the site meets the new consistency exemption, then OSCs also must demonstrate in Section IV of this document how the site meets the NCP section 300.65 criteria for initiating a removal action.

A(i). There is an Immediate Risk to Public Health, Welfare or the Environment

The key word here is immediate. This discussion should focus on how soon the public or the environment will be at risk. Describe site conditions that constitute an immediate risk. Indicate all hazardous substances involved and define the immediacy of the risk (e.g., nearby residents will be exposed within two weeks). State whether immediate risk is to public health, welfare, or the environment, or a combination. If a health risk is present, describe affected populations and their proximity to the site. If an environmental risk is involved, describe the nature of the threat. If there is a way to determine how quickly the public may be threatened by an increasing threat (e.g., modelling), describe how soon the public will be at risk. Indicate any weather conditions that may exacerbate site conditions. Cite all supporting documentation, for example, ATSDR health advice.

A(ii). Continued Response Actions are Immediately Required to Prevent, Limit, or Mitigate an Emergency

The key word here is emergency. Describe the conditions that are considered emergencies and explain why response actions must continue beyond $2 million. Include an explanation of why they are required (e.g., to prevent, limit, or mitigate an emergency) and within what time frame. Explain the consequences if an exemption is not granted and action is not continued. Cite all supporting documentation, as appropriate.

A(iii). Assistance Will Not Otherwise be Provided on a Timely Basis

The key words here are timely response. Emphasize that no other party can provide timely response. Indicate whether the State/locality or other party is willing and financially able to accomplish the required work within the required time frame. Indicate whether Federal or State enforcement actions are expected to result in revenues to support the action requested. Reference the enforcement section or attach enforcement sensitive information. If the site is on the NPL, state when remedial action is planned to begin.

OR

B. Continued Response Actions are Otherwise Appropriate and Consistent with the Remedial Action to be Taken

Describe how the proposed removal action is appropriate and consistent with Federal, State or PRP remedial actions currently underway or planned for the site. For example, discuss how continued removal actions will facilitate future remedial cleanup activities (e.g., consolidation and stabilization of hazardous substances on site) or how continued response will not hinder or interfere with the remedial action to be taken. If no remedial plans are available, describe what remedial actions might be expected to be undertaken given site conditions.

VI. ENFORCEMENT

The purpose of this section is to assist in making the determination of the potential for response action by PRPs. This information should be referenced here as "see attachment" and placed on a separate page entitled "Enforcement Sensitive." This section includes information on the enforcement strategy (summarized), the status of notice letters or 106 orders and/or negotiations, the available enforcement authority, potentially responsible parties, previous enforcement actions, the probability of recovering costs and the recommended enforcement strategy. This section also should contain information on the potential for a non-Federal response.

A. Enforcement Strategy

1. Briefly summarize the enforcement strategy.

Summarize the enforcement strategy for notifying, negotiating with, and litigating against responsible parties. Indicate whether the State or Federal enforcement attorneys are actively pursuing informal negotiations, are actively pursuing litigation, or have decided to postpone or forgo litigation (e.g, no enforcement actions are currently underway or the RP has agreed to a cleanup). Describe what enforcement actions are planned (e.g., negotiations or Administrative Orders).

If an enforcement strategy has not yet been developed, describe the strategy that is recommended by the Regional enforcement attorney. For example, discuss any decisions to pursue Federally-funded action or continue litigation or negotiations. Indicate whether concurrence to proceed with removal is conditional. If so, state the conditions.

2. Briefly summarize the enforcement actions.

Indicate if litigation is proceeding or is contemplated. Cite under what statutory authority the action will be or is being taken (e.g., RCRA section 7003, CERCLA).

B. Status of Enforcement Actions

1. Potentially responsible parties.

Describe the number and types of potentially responsible parties (e.g., transporters and owners or operators of production facilities or waste disposal facilities). Indicate whether the PRP is known. If a site has one or two primary responsible parties, they may be named. If a search has been completed, the results should be summarized.

Indicate if the PRP has taken action. If so, mention whether or not the action was adequate. Indicate whether the PRP is financially capable and likely to act within a time frame that adequately protects public health and the environment. Cite, do not repeat, descriptions of PRP actions discussed previously in the request.

Describe what efforts are being undertaken to obtain additional PRP response. Discuss the status of the potentially responsible party search. Mention if search efforts are underway and whether there is time to continue the search before response must begin. If not, indicate that PRP search will continue as the removal proceeds and a PRP may later take over removal actions. Describe the attempts that have been made to locate PRPs (e.g., oral inquiries both on and off site). Include whether the PRP has been notified (e.g., orally contacted, written follow-up).

Give the date(s) that notice letter(s) were sent and a summary of the responses of the recipients (e.g., the PRPs have agreed to clean up the site or the PRPs have denied involvement at the site). If negotiations are underway, describe the activities under discussion.

2. Discuss the probability of recovering costs.

Estimate the solvency of the major responsible parties. Evaluate the ability to obtain the necessary actions in a timely fashion through litigation. This should be included if it explains why actions are being requested of the EPA when responsible parties are financially able to undertake these actions.

VII. PROPOSED ACTIONS AND COSTS

The purpose of this section is to provide guidelines for presenting information on proposed and alternative actions estimated costs and the project schedule. Also included is information on how the action addresses the threat.

A. Proposed Actions

1. Describe the proposed actions and what they will accomplish.

Describe the specific tasks involved and the results sought by the removal action as they pertain to the threat(s) discussed in Section III of this model Action Memorandum. For example, "The primary objective of the proposed action is the mitigation of the direct contact threat to nearby residents by provision of alternate potable water supplies to the affected homes." The NCP provides examples of types of action which may be taken for this type of incident. The list in the NCP is not exhaustive, however, and actions are not limited to these examples.

Describe the procedures to be undertaken in the proposed actions. For example, "A two-phase removal action is planned. The first phase is the installation of activated carbon columns. The second phase is the installation of water mains and hookups to public water supply." Describe any impediments to the proposed action (e.g., lack of public acceptance or problems with access).

If off-site storage, treatment or disposal is proposed, indicate the amount or type of waste(s) requiring off-site treatment or disposal.

the facility selected and the extent to which the substance can be treated. If off-site treatment or disposal is required, please see the provisions of the off-site disposal policy. In cases where the type or amount of waste is not available for inclusion in the Action Memorandum, indicate the intent to comply with all requirements of the Off-site Policy. For detailed information on the Off-site Policy, OSCs should refer to Chapter IV of the Superfund Removal Procedures manual. State whether the site is to be stabilized or cleaned up, if known.

Indicate whether any further information is needed before all response actions can be decided (e.g., sampling to address ground-water or drinking water contamination or a RCRA permit and compliance verification are needed for selecting the disposal option).

State why proposed actions are appropriate for this situation and explain the rationale for choosing this option. Describe the technical feasibility and probable effectiveness of the proposed action. Address intermedia relationships, temporary versus long-term solutions, and adverse impacts.

2. Provide a discussion of how the proposed actions will contribute to the efficient performance of long-term remedial actions.

For all removals, discuss how, to the extent practicable given the exigencies of the situation, the proposed actions will contribute to the efficient performance of long-term remedial actions, whether Federal, State or PRP. The primary objective of this provision is to avoid the need for removal restarts. The following questions should be considered when preparing this discussion:

- What is the long-term cleanup plan for the site?
- Which threats will require attention prior to the start of the long-term action?
- How far should the removal action go to assure that the threats are adequately abated?
- Is the proposed removal action consistent with the long-term remedy?

For additional guidance on this requirement, see OSWER directive #9360.0-13, "Guidance on Implementation of the 'Contribute to Remedial Performance' Provision."

If no remedial plans are available, describe how proposed removal actions are consistent with remedial actions that would be expected to be undertaken based on site conditions. Discussion should be based on best professional judgement using the information available. In-depth analyses of remedial actions are not required. For example, indicate that the proposed actions will address near-term threats that may require attention prior to the start of remedial action as well as more urgent threats. Also discuss how, wherever appropriate, removal actions will provide a suitable foundation for future remedial actions. In general, removal actions should not interfere with future remedial actions, nor should proposed actions eliminate any feasible remedial alternatives.

3. Describe the project schedule.

Give the time frame needed to stabilize or clean up the site and include how quickly response can begin. Give the estimated period of performance. State whether the proposed action will exceed twelve months. (Note: previous actions count toward the twelve-month and $2 million limits.) If the twelve-month clock has started, state when the twelve months end. If post removal site control will be required, the State or other entity must provide it. Indicate a commitment to provide post removal site control.

If the proposed action is expected to exceed the twelve-month statutory limit, then a twelve-month exemption request approved by the RA should accompany this removal Action Memorandum.

4. Alternative actions considered.

Describe other actions considered, e.g., providing hookups to city water instead of providing bottled water. Briefly describe the technical feasibility and probable effectiveness of each alternative. Address intermedia relationships, temporary versus long-term solutions, and possible adverse impacts. State any impediments to each alternative, e.g., public acceptance or access to the site. Give the estimated period of performance for alternative actions. State how quickly response can begin. State the duration of the alternative. State whether it will exceed twelve months. For example, "The first phase should be completed within approximately three weeks of initiation of the action. The second can be expected to be completed by July 1988." Give further detail for each component of the phases. State whether post removal site control will be required and who would provide it or if this would be an impediment.

B. Estimated Costs

Detail the estimated total project ceiling and an itemized breakout of the following cost categories that comprise that ceiling. This includes extramural cleanup costs allowed under the RA's $2,000,000 authority (which consist of cleanup contractor costs, letter contracts with States and other commercial entities, and site-specific IAGs); TAT costs; EPA intramural costs; National Contract Lab Program analytical costs; and ERT/REAC costs. If applicable, include the cost of previous removal actions taken at the site. An example is provided on the following page.

Summary of Costs		Estimated Costs
Extramural Costs		
Extramural Cleanup Contractor (includes ERCS, Mini-ERCS, Subcontractors, Letter Contracts, Alternative Technology Contracts, IAGS with other Federal agencies, etc; contingency can be 10-20%.)		$1,422,900
	(15% contingency)	251,100
		1,674,000
TAT costs		20,000
CLP analytical services		40,000
ERT/REAC		40,000
Subtotal Extramural Costs		1,774,000
15% Contingency of above costs (round to nearest thousand)		266,100
Total Extramural Cost		$2,040,100
Intramural Costs		
Intramural Direct Costs (HQ, ERT and Region)		13,000
Intramural Indirect Costs*		90,000
TOTAL PROJECT CEILING ESTIMATE		$2,143,100

If CERCLA funds have been obligated for past actions, then indicate the obligations:

TOTAL PROJECT CEILING REQUESTED	$2,143,100
Previous Removal (1982) Obligations	200,000
TOTAL CEILING TO DATE	$2,343,100

A statement of obligations is necessary because these costs count toward the $2 million limit.

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* Formula for calculating indirect costs:

Region-Specific Indirect Cost Rate X Estimated Regional Direct Labor Hours = Indirect Costs

Regional indirect cost rates are provided in the Comptroller Policy Announcement No. 87-15, "New Method for Determination of Indirect Costs in Superfund Removal Project Ceilings" (7/15/87).

VIII. EXPECTED CHANGE IN THE SITUATION SHOULD NO ACTION BE TAKEN OR ACTION BE DELAYED

This section may consist of information previously provided in Section V.B., the discussion of how site conditions meet the consistency exemption from the statutory criteria. If this information is provided elsewhere in the Action Memorandum, it should not be repeated here, but should be cited.

Describe any expected changes in the situation should no action be taken or should action be delayed. Include a description of a worst-case scenario that could possibly occur should no action be taken. These changes may include:

- Spread in scope of contamination. For example, the ground-water contaminant plume may spread through a larger area.

- Change in nature of contamination. For example, incompatible substances may come into contact with each other, producing added threats such as fire/explosion or formation of poisonous gases such as hydrogen cyanide.

- Increased threat to human health and the environment if action is delayed or denied. For example, the contaminant plume may soon reach drinking water wells or phosphine gas or other poisonous gas may be produced.

- Additional response actions required if action is delayed or denied resulting in a longer, more costly removal. For example, the drums will deteriorate further, leaking additional contaminants into the ground.

IX. IMPORTANT POLICY ISSUES (Only as necessary and applicable)

If applicable, include a separate section on important policy issues that are significant to this request. These issues may include:

- Provision for cost sharing (cost sharing is applicable only in a small number of cases and applies only to removals at NPL sites that were publicly operated, either by a State or a political subdivision thereof, at the time of release and a remedial action is ultimately undertaken at the site)

- The division of responsibilities among Federal and/or State agencies

- Off-site disposal availability and compliance with OSWER's Off-site Policy

- Compliance with other environmental statutes

- Special coordination needs/issues of national significance (e.g., dioxin) and similar issues

- Noncontiguous sites (if multiple locations are recommended by the Region for consideration as one site, give justification for such consideration).

Issues should be fully explained and include a discussion on the efforts being made to resolve the issue and/or decisions that must be made before a resolution is reached.

X. RECOMMENDATION

The purpose of this section is to briefly present the Region's recommendations, rationale, and projected costs for the action. For example, "Because conditions at the site meet the NCP section 300.65(b)(2) criteria for a removal and one of the two CERCLA 104(c) exemptions from the $2 million limitation as described herein, I recommend your approval of proposed removal action and $2 million exemption. The total project ceiling is $X, of which $Y are for extramural cleanup contractor costs (Regional allowance). I recommend your approval to initiate response actions due to the nature of the threat described herein."

Approved: ______________________________ Date: ____________
(Name and Title)

Disapproved: ______________________________ Date: ____________
(Name and Title)

Attachments

APPENDIX 8

REMOVAL DELEGATION 14-1-A
SEPTEMBER 13, 1987

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

14-1-A. Selection and Performance of Removal Actions Costing Up to $2,000,000

1. AUTHORITY. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), to determine the necessity of and to select and perform removal actions costing up to $2,000,000 where the action is expected to last up to one year.

2. TO WHOM DELEGATED. Regional Administrators.

3. LIMITATIONS.

a. Removal actions will not continue after $2,000,000 has been obligated, unless authorized to continue under Delegation 14-2-A, "Removal Actions Initially Expected to Cost Over $2,000,000 and Continued Removal Actions After Obligations of $2,000,000," or Delegation 14-2-B, "Removal Actions Costing Over $2,000,000 at NPL and Proposed NPL Sites."

b. The Assistant Administrator for Solid Waste and Emergency Response or his/her designee must concur prior to the initiation of a removal action at non-NPL sites where the proposed action is on the List of Nationally Significant or Precedent-Setting Removal Action Categories.

4. REDELEGATION AUTHORITY. This authority may be redelegated to Division Directors, who may then redelegate on On-Scene Coordinators (On-Scene Coordinators may exercise this authority only for obligations not to exceed $50,000 for initiating removal actions).

5. ADDITIONAL REFERENCES.

a. Sections 104, 121(d), and 121(e) of CERCLA.

b. National Contingency Plan, 40 CFR 300.

c. Superfund Removal directives.

d. The $2,000,000 limit includes all extramural costs and headquarters and Regional intramural costs, except for Section 104(b) studies and all enforcement costs.

e. List of Nationally Significant or Precedent-Setting Removal Categories.

APPENDIX 9

EXEMPTION FROM TWELVE-MONTH LIMIT ACTION MEMORANDUM (MODEL)

MODEL EXEMPTION FROM TWELVE-MONTH LIMIT ACTION MEMORANDUM

The purpose of Appendix 9 is to provide OSCs with a sample format that can easily be followed to request an exemption from the twelve-month limitation and to document that the threat meets the exemption requirements set forth in CERCLA, as amended by SARA. The CERCLA Amendments added a new independent exemption that permits an exemption to the statutory limitations on cost and duration whenever a continued removal action is determined to be otherwise appropriate and consistent with remedial action to be taken, whether Federal, State or PRP. This new exemption (consistency exemption) applies to NPL sites and sites proposed for the NPL, and to non-NPL sites only in limited circumstances.

The following model is representative of the memoranda frequently prepared by the Regions, and is intended to be used in situations where an initial Action Memorandum (Appendix 6) has been approved, but an exemption to the twelve-month limitation becomes necessary. OSCs should attach to their Action Memoranda all appropriate ATSDR Health Advisories.

I. HEADING

DATE: Month/Day/Year

SUBJECT: Request for a Twelve-Month Exemption for the Site, City, State
ACTION MEMORANDUM

Site/Spill-ID:

Category of Removal: All removal actions are considered time-critical unless otherwise indicated (e.g., classic emergency or non-time-critical)

National Significance: Indicate whether the removal is of national significance

FROM: On-Scene Coordinator

TO: Regional Administrator

THRU: Regional Division Director, as appropriate

II. ISSUE

Briefly state that continued response actions of a duration greater than twelve months are required and further removal actions cannot be taken unless an exemption to the statutory limitation is granted. Indicate which of the CERCLA section 104(c) exemptions the site meets. Give the date on which response action was initiated at the site and when the twelve-month limit will expire. Estimate how much more time is needed to complete the removal action.

III. BACKGROUND

The primary purpose of this section is to identify the key characteristics of the release in order to lay the foundation for demonstrating that an actual or potential threat to human health or the environment still exists. These characteristics include site location and pre-release use of the site, the type of release and its scope. In compiling this information, OSCs should consider the availability of pictures, diagrams, maps and/or sketches that may assist in describing the site.

A. Incident/Response History

Briefly discuss the background/history of the site including: current conditions at the site (e.g., overflowing lagoon); who initiated action (for example, EPA or the State) and when; the date action was approved in the initial removal Action Memorandum and by whom; the actions initially approved (e.g., temporary relocation or an extent-of-contamination study); actions to date (e.g., staging of drums or provision of bottled water); and actions to be completed, such as final disposal at a RCRA-approved facility.

State whether the site is on the NPL. If the site is on the NPL, then state when remedial action is expected. For sites not on the NPL, indicate whether the site is scheduled to be or has been scored, if proposal for the NPL is expected, or already has occurred.

B. Site Conditions

Briefly describe the problems or conditions at the site that have led to the twelve-month limit exemption request. Examples include adverse weather conditions, newly detected threats, natural disasters or the extensiveness of the work required.

IV. EXEMPTION FROM STATUTORY LIMITS

In order to obtain an exemption from the twelve-month limit, OSCs must demonstrate in the Action Memorandum that the site meets one of the two exemptions in CERLCA section 104(c). Describe in detail how site conditions meet the exemption requirements listed below. In order to be granted an exemption, site conditions must meet either exemption A or B below. Include a description of a worst-case scenario to help substantiate the need for action. Be sure to note and include as attachments any appropriate ATSDR health advice memoranda or other data that substantiate the need to continue removal action beyond twelve months.

A(i). There is an Immediate Risk to Public Health, Welfare, or the Environment

The key word here is immediate. This discussion should focus on how soon the public or the environment will be at risk. Describe site conditions that constitute an immediate risk. Indicate all hazardous substances involved and define the immediacy of the risk (e.g., nearby residents will be exposed within two weeks). State whether the immediate risk is to public health, welfare, or the environment, or a combination. If a health risk is present, describe affected populations and their proximity to the site. If an environmental risk is involved, describe the nature of the threat. If there is a way to determine how quickly the public may be threatened by an increasing threat (e.g., modelling), describe how soon the public will be at risk. Indicate any weather conditions that may exacerbate site conditions. Cite all supporting documentation, for example, ATSDR health advice.

A(ii). Continued Response Actions are Immediately Required to Prevent, Limit or Mitigate an Emergency

The key word here is emergency. Describe the conditions that are considered emergencies and explain why response actions must continue beyond twelve months. Include an explanation of why they are required (e.g., to prevent, limit, or mitigate an emergency) and within what time frame. Explain the consequences if an exemption is not granted and action is not continued. Cite all supporting documentation, as appropriate.

A(iii). Assistance Will Not Otherwise be Provided on a Timely Basis

The key words here are timely response. Emphasize that no other party can provide timely response. Indicate whether the State, locality or other party is willing and financially able to accomplish the required work within the required time frame. Indicate whether Federal or State enforcement actions are expected to result in revenues to support the action requested. Reference the enforcement section or attach enforcement sensitive information. If the site is on the NPL, state when remedial action is planned to begin.

OR

B. Continued Response Actions are Otherwise Appropriate and Consistent with the Remedial Action to be Taken

Describe how the proposed removal action for the site is appropriate and consistent with Federal, State or PRP remedial actions currently underway or planned for the site. For example, discuss how continued removal actions will facilitate future remedial cleanup activities (e.g., consolidation and stabilization of hazardous substances on site) or how continued response will not hinder or interfere with the remedial action to be taken. If no remedial plans are available, describe what remedial actions might be expected to be undertaken given site conditions.

V. PROPOSED ACTIONS

Briefly describe what actions are required to complete site stabilization or cleanup. Indicate the objective of the proposed actions or the threats these actions are to abate, minimize or limit. For example, "the primary objective of the proposed action is the mitigation of the threat to public health by provision of alternate water supplies to the affected residents." Describe all alternative actions and provide the rationale for selecting the actions proposed. If off-site storage, treatment or disposal is proposed, indicate the amount or type of waste(s) requiring off-site treatment or disposal and the facility selected. Also discuss any options to off-site disposal. In cases where the type or amount of waste is not available for inclusion in the Action Memorandum, indicate the intent to comply with all requirements of the Off-site Policy. For detailed information on the Off-site Policy, OSCs should refer to Chapter IV of the Superfund Removal Procedures manual.

For all removals, discuss how, to the extent practicable given the exigencies of the situation, response actions will contribute to the efficient performance of long-term remedial actions, whether Federal, State or PRP. The primary objective of this provision is to avoid the need for removal restarts. The following questions should be considered when preparing this discussion:

- What is the long-term cleanup plan for the site?
- Which threats will require attention prior to the start of the long-term action?
- How far should the removal action go to assure that the threats are adequately abated?
- Is the proposed removal action consistent with the long-term remedy?

For additional guidance on this requirement, see OSWER directive #9360.0-131, "Guidance on Implementation of the 'Contribute to Remedial Performance' Provision."

If no remedial plans are available, describe how proposed removal actions are consistent with the remedial actions that would be expected to be undertaken based on site conditions. Discussion should be based on best professional judgement using the information available. In-depth analyses of remedial actions are not required. For example, indicate how proposed actions (provided a twelve-month exemption is granted) will address near-term threats that may require attention prior to the start of remedial action as well as more urgent threats. Also discuss how, wherever appropriate, removal actions will provide a suitable foundation for future remedial actions. In general, removal actions should not interfere with future remedial actions, nor should proposed actions eliminate any feasible remedial alternatives.

VI. RECOMMENDATION

The purpose of this section is to briefly present the Region's recommendations, rationale, and projected time schedule. For example, "Because conditions at the site meet one of the two CERCLA 104(c) exemptions as described herein, I recommend that you approve an exemption from the twelve-month limit to allow continued removal at the Site, City, State." Include any special conditions or provisions that pertain to this exemption.

Approve: ______________________________ Date: ____________
(Name and Title)

Disapprove: ______________________________ Date: ____________
(Name and Title)

Attachments

APPENDIX 10

CEILING INCREASE ACTION MEMORANDUM (MODEL)

MODEL CEILING INCREASE ACTION MEMORANDUM

The following Action Memorandum format is recommended for approval of all ceiling increase requests, including those over $2 million providing an exemption has been approved. The purpose of Appendix 10 is to provide the OSC with a generic format that can be easily followed when substantiating the need for exceeding the current ceiling on removal costs. If the ceiling increase will bring the total project ceiling above $2 million, OSCs should prepare a combined $2 million exemption and ceiling increase request (Appendix 12).

I. HEADING

DATE: Month/Day/Year

SUBJECT: Request for a Ceiling Increase for the Site, City, State
ACTION MEMORANDUM

Site/Spill-ID:

Category of Removal: All removal actions are considered time-critical unless otherwise indicated (e.g., classic emergency or non-time-critical)

National Significance: Indicate whether the removal is of national significance

FROM: On-Scene Coordinator

TO: Regional Administrator

NOTE: If the ceiling is already above $2 million, then the request is addressed to the AA, OSWER from the RA, thru the Director, OERR to the attention of the Director, ERD.

II. ISSUE

Briefly explain why the ceiling increase is being requested. Indicate what the new project ceiling will be if the ceiling increase is approved. For example, "A ceiling increase of $X for a new total of $Y is being requested to continue a removal action at the site." If a ceiling increase will result in a total project ceiling that exceeds the $2 million statutory limit, then prepare a combined ceiling increase/$2 million exemption request.

III. BACKGROUND

The primary purpose of this section is to identify the key characteristics of the release in order to lay the foundation for demonstrating that an actual or potential threat to human health or the environment still exists. These characteristics include site location and pre-release use, the type of release, and its scope. In compiling this information, the OSC should consider the availability of pictures, diagrams, maps, and/or sketches that may assist in describing the site.

A. Incident/Response History

Discuss the background/history of the site, including: current site conditions (e.g., "the site was used for recycling PCB capacitors and is unfit for human habitation because of high levels of PCBs in the soil"); who initiated action and when (for example, EPA or the State); the date action was approved in the initial Action Memorandum and by whom; the actions initially approved; actions to date (e.g, staging and overpacking of drums, or the pumping down of lagoons).

State whether the site is on the NPL. If the site is on the NPL, then state when remedial action is expected. For sites not on the NPL, indicate whether the site is scheduled to be or has been scored, if proposal for the NPL is expected, or already has occurred.

B. Site Conditions

Briefly describe the site conditions and the reasons for a ceiling increase request. These may include unanticipated events such as natural disasters, newly detected threats, contract lab delays or discovery of additional areas requiring cleanup or stabilization. Include a description of a worst-case scenario should the ceiling increase not be granted.

Discuss the present status of the removal action (e.g., drums currently awaiting disposal at a RCRA-approved disposal site). Describe for what the ceiling increase will be used (e.g., disposal of additional drums that washed ashore after the removal action began).

Include any information that may help substantiate the need for a ceiling increase. Attach any enforcement status information; ATSDR health advice; and other pertinent information, such as pictures, drawings, and other materials to the back of the Action Memorandum.

IV. PROPOSED ACTIONS

Describe the proposed actions to be undertaken if a ceiling increase is approved. Briefly describe what actions are required to complete the response (e.g, sampling for compatibility remains to be completed before final disposal may be undertaken). Indicate the objective of the proposed actions or threats these actions are to abate, minimize or limit. Describe any alternative actions and provide the rationale for selecting the actions proposed. If off-site storage, treatment or disposal is proposed, indicate the amount or type of waste(s) requiring off-site treatment or disposal and the facility selected. Also discuss any options to off-site disposal. In cases where the type or amount of waste is not available for inclusion in the Action Memorandum, indicate the intent to comply with all requirements of the Off-site Policy. For detailed information on the Off-site Policy, OSCs should refer to Chapter IV of this manual.

For all removals, discuss how, to the extent practicable given the exigencies of the situation, continued response actions (provided the ceiling increase is approved) will contribute to the efficient performance of long-term remedial actions, whether Federal, State or PRP. The primary objective of this provision is to avoid the need for removal restarts. The following questions should be considered when preparing this discussion:

- What is the long-term cleanup plan for the site?
- Which threats will require attention prior to the start of the long-term action?
- How far should the removal action go to assure that the threats are adequately abated?
- Is the proposed removal action consistent with the long-term remedy?

For additional guidance on this requirement, see OSWER directive #9360.0-131, "Guidance on Implementation of the 'Contribute to Remedial Performance' Provision."

If no remedial plans are available, describe how proposed removal actions are consistent with the remedial actions that would be expected to be undertaken based on site conditions. Discussion should be based on best professional judgement using the information available. In-depth analyses of remedial actions are not required. For example, indicate how continued actions (provided a ceiling increase is granted) will address near-term threats that may require attention prior to the start of remedial action as well as more urgent threats. Also discuss how, wherever appropriate, continued removal actions will provide a suitable foundation for future remedial actions. In general, removal actions should not interfere with future remedial actions, nor should proposed actions eliminate any feasible remedial alternatives.

V. SUMMARY OF COSTS

Provide a summary of costs, including a breakdown of costs for both the current ceiling and the proposed ceiling. Detail the estimated total project ceiling and an itemized breakdown of the following cost categories that comprise the ceiling. This includes extramural costs allowed under the RA's $2,000,000 authority (these consist of cleanup contractor costs, letter contracts with States and other commercial entities, and site-specific IAGs); TAT costs; EPA intramural costs; National Contract Lab Program analytical costs; and ERT/REAC costs. For example, the total project ceiling should be broken down as shown on the following page.

Summary of Costs	Current Ceiling	Proposed Ceiling
Extramural Costs		
Extramural Cleanup Contractor (includes ERCS, Mini-ERCS, Subcontractors, Letter Contracts, Alternative Technology Contracts, IAGs with other Federal agencies, etc; contingency can be 10-20%.)	$669,600 (20% contingency) 167,400 $837,000	$1,109,600 277,400 $1,387,000
TAT costs	10,000	10,000
CLP analytical services	20,000	20,000
ERT/REAC	20,000	20,000
Subtotal Extramural Costs	887,000	1,437,000
Project contingency (15%) (round to nearest thousand)	133,050	215,550
Total Extramural Costs	$1,020,050	$1,652,550
Intramural Costs		
Intramural Direct Costs (HQ, ERT and Region)	19,000	19,000
Intramural Indirect Costs*	33,000	33,000
TOTAL PROJECT CEILING ESTIMATE	$1,072,050	$1,704,550

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* Formula for calculating indirect costs:

$$\text{Region-Specific Indirect Cost Rate} \times \text{Estimated Regional Direct Labor Hours} = \text{Indirect Costs}$$

Regional indirect cost rates may be found in the Comptroller Policy Announcement No. 87-15, "New Method for Determination of Indirect Costs in Superfund Removal Project Ceilings" (7/15/87).

VI. RECOMMENDATION

The purpose of this section is to briefly present the Region's recommendations, rationale, and project costs. For example, "To eliminate the continuing threat posed to the nearby public and the environment consistent with the removal criteria contained in section 300.65 of the National Contingency Plan, I recommend you approve this $X ceiling increase request." Briefly summarize what the additional funds will be used for. Briefly state how much the approval would increase the total project ceiling. For example, "Your approval would raise the total project ceiling from $X to $Y, of which $Z are for the extramural cleanup contractor costs (Regional allowance). You may indicate your approval or disapproval by signing below."

Approve: ______________________________ Date: ______________
(Name and Title)

Disapprove: ______________________________ Date: ______________
(Name and Title)

Attachments

APPENDIX 11

REMOVAL DELEGATIONS 14-2-A AND 14-2-B
SEPTEMBER 21, 1987

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA)

14-2-A. Removal Actions Initially Expected to Cost Over $2,000,000 and Continued Removal Actions After Obligations Of $2,000,000 (Pursuant to the Emergency Waiver)

1. AUTHORITY. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), to determine the necessity of and to select and perform removal actions to continue beyond $2,000,000 when all the following circumstances exist:

a. Where continued response actions are immediately required to prevent, limit, or mitigate an emergency; and

b. Where there is an immediate risk to public health or welfare or the environment; and

c. Where such assistance will not otherwise be provided on a timely basis.

2. TO WHOM DELEGATED. Assistant Administrator for Solid Waste and Emergency Response.

3. REDELEGATION AUTHORITY. This authority may be redelegated to the Office Director, Office of Emergency and Remedial Response.

4. ADDITIONAL REFERENCES.

a. Sections 104, 121(d), and 121(e) of CERCLA.

b. National Contingency Plan, 40 CFR 300.

c. Superfund Removal directives.

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA)

14-2-B. Removal Actions Initially Expected to Cost Over $2,000,000 and Continued Removal Actions After Obligations Of $2,000,000 (Pursuant to the Consistency Waiver)

1. AUTHORITY. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act as amended (CERCLA), to determine the necessity of and to select and perform removal actions to continue beyond $2,000,000 when the continued response action is otherwise appropriate and consistent with the remedial action to be taken.

2. TO WHOM DELEGATED. Assistant Administrator for Solid Waste and Emergency Response and Regional Administrators.

3. LIMITATIONS. The Regional Administrators may only exercise this authority at sites within their Regions specified by the Assistant Administrator for Solid Waste and Emergency Response.

4. REDELEGATION AUTHORITY. The Assistant Administrator for Solid Waste and Emergency Response may redelegate this authority to the Office Director, Office of Emergency and Remedial Response. Regional Administrators may not redelegate this authority.

5. ADDITIONAL REFERENCES.

   a. Sections 104, 121(d), and 121(e) of CERCLA.

   b. National Contingency Plan, 40 CFR 300.

   c. Superfund Removal directives.

APPENDIX 12

EXEMPTION FROM $2 MILLION LIMIT AND CEILING INCREASE ACTION MEMORANDUM (MODEL)

MODEL $2 MILLION LIMIT AND CEILING INCREASE ACTION MEMORANDUM

The purpose of Appendix 12 is to provide OSCs with a sample format that can easily be followed to request an exemption from the $2 million limitation and a ceiling increase in order to continue site actions and to document that the threat meets one of the two exemptions set forth in CERCLA, as amended by SARA. The CERCLA Amendments added a new exemption to the statutory limitations on cost and duration that allows for an exemption whenever a continued removal action is determined to be otherwise appropriate and consistent with future remedial actions to be taken, whether Federal, State or PRP. This new exemption applies to NPL sites and sites proposed for the NPL, and to non-NPL sites only in limited circumstances.

The following model is representative of the memoranda frequently prepared by the Regions, it is intended to be used in situations where an initial Action Memorandum has been approved, but site conditions are such that to complete the removal action underway an exemption to the $2 million limit and a ceiling increase is necessary.

I. HEADING

DATE: Month/Day/Year

SUBJECT: Request for an Exemption from the $2 Million Limit and Ceiling Increase at Site, City, State
ACTION MEMORANDUM

Site/Spill-ID:

Category of Removal: All removal actions are considered time-critical unless otherwise indicated (e.g., classic emergency or non-time-critical)

National Significance: Indicate whether the removal is of national significance

FROM: Regional Administrator

TO: Assistant Administrator for Solid Waste and Emergency Response

THRU: Director,
Office of Emergency and Remedial Response

ATTN: Director,
Emergency Response Division

II. ISSUE

State that continued response actions are estimated to exceed the $2 million statutory limit and further removal actions cannot be undertaken unless an exemption to this limitation and a ceiling increase are granted. Include as an attachment a summary of costs and the proposed ceiling increase.

III. BACKGROUND

The primary purpose of this section is to identify the key characteristics of the release in order to lay the foundation for demonstrating that an actual or potential threat to human health or the environment still exists. These characteristics include site location and pre-release use, the type of release, and its scope. In compiling this information, the OSC should consider the availability of pictures, diagrams, maps, and/or sketches that may assist in describing the site.

A. Incident/Response History

Briefly discuss the background/history of the site including: current site conditions (e.g., overflowing lagoon); who initiated action and when (for example, EPA or the State); the date action was approved in the initial Action Memorandum and by whom; the actions initially approved; actions to date; and actions to be completed (e.g., provision of bottled water).

State whether the site is on the NPL. If the site is on the NPL, then state when remedial action is expected. For sites not on the NPL, indicate whether the site is scheduled to be or has been scored, if proposal for the NPL is expected, or has already occurred.

B. Site Conditions

Briefly describe the problems or conditions at the site that have led to the $2 million limit exemption and ceiling increase request. Examples include, adverse weather conditions, natural disasters, or the extensiveness of the work required.

IV. EXEMPTION FROM STATUTORY LIMITS

In order to obtain an exemption from the $2 million limit, the OSC must demonstrate in the Action Memorandum that the site meets one of the two CERCLA section 104(c) exemptions. Describe in detail how site conditions meet the exemption requirements listed below. In order to be granted an exemption, site conditions must either meet exemption A or B below. Include a description of worst-case scenarios to help substantiate the need for action. Be sure to note and include as attachments any ATSDR health advice memoranda or other data that substantiate the need to exceed the $2 million limitation.

A(i). There is an Immediate Risk to Public Health, Welfare or The Environment

A key word here is immediate. This discussion should focus on how soon the public or the environment will be as risk. Describe site conditions that constitute an immediate risk. Indicate all hazardous substances involved and define the immediacy of the risk (e.g., nearby residents will be exposed within two weeks). State whether immediate risk is to public health, welfare, or the environment, or a combination. If a health risk is present, describe affected populations and their proximity to the site. If an environmental risk is involved, describe the nature of the threat. If there is a way to determine how quickly the public may be threatened by an increasing risk (e.g., modelling), describe how soon the public will be at risk. Indicate any weather conditions that may exacerbate site conditions. Cite all supporting documentation, for example, ATSDR health advice.

A(ii). Continued Response Actions are Immediately Required to Prevent, Limit, or Mitigate an Emergency

The key word here is emergency. Describe the conditions that are considered emergencies and explain why the response actions must continue beyond $2 million. Include an explanation of why they are required (e.g., to prevent, limit, or mitigate an emergency) and within what time frame. Explain the consequences if an exemption is not granted and action is not continued. Cite all supporting documentation, as appropriate.

A(iii). Assistance Will Not Otherwise be Provided on a Timely Basis

The key words here are timely response. Emphasize that no other party can provide timely response. Indicate whether the State, locality or other party is willing and financially able to accomplish the required work within the required time frame. Indicate whether Federal or State enforcement actions are expected to result in revenues to support the action requested. Reference the enforcement section or attach enforcement sensitive information. If the site is on the NPL, state when remedial action is planned to begin.

OR

B. Continued Response Actions are Otherwise Appropriate and Consistent with the Remedial Action to be Taken

Describe how the proposed removal action for the site is appropriate and consistent with Federal, State or PRP remedial actions currently underway or planned for the site. For example, discuss how continued removal actions will facilitate future remedial cleanup activities (e.g., consolidation and stabilization of hazardous substances on site) or how continued response will not hinder or interfere with the remedial action to be taken. If no remedial plans are available, describe what remedial actions might be expected to be undertaken given site conditions.

V. PROPOSED ACTIONS

Briefly describe what actions are required to complete site stabilization or cleanup. Indicate the objective of the proposed actions or threats these actions are to abate, minimize or limit. For example, "the primary objective of the proposed action is the mitigation of the threat to public health by provision of alternate water supplies to the affected residents." Describe any alternative actions and provide the rationale for selecting the actions proposed. If off-site storage, treatment or disposal is proposed, indicate the amount or type of waste(s) requiring off-site treatment or disposal and the facility selected. Also discuss any options to off-site disposal. In cases where the type or amount of waste is not available for inclusion in the Action Memorandum, indicate the intent to comply with all requirements of the Off-site Policy. For detailed information on the Off-site Policy, OSCs should refer to Chapter IV of this manual.

For all removals, discuss how, to the extent practicable given the exigencies of the situation, response actions will contribute to the efficient performance of long-term remedial actions. The primary objective of this provision is to avoid the need for removal restarts. The following questions should be considered when preparing this discussion:

- What is the long-term cleanup plan for the site?
- Which threats will require attention prior to the start of the long-term action?
- How far should the removal action go to assure that the threats are adequately abated?
- Is the proposed removal action consistent with the long-term remedy?

For additional guidance on this requirement, see OSWER directive #9360.0-131, "Guidance on Implementation of the 'Contribute to Remedial Performance' Provision."

If no remedial plans are available, describe how proposed removal actions are consistent with the remedial actions that would be expected to be undertaken based on site conditions. Discussion should be based on best professional judgement using the information available. In-depth analyses of remedial actions are not required. For example, indicate how proposed actions (provided a $2 million exemption and ceiling increase are granted) will address near-term threats that may require attention prior to the start of remedial action as well as more urgent threats. Also discuss how, wherever appropriate, removal actions will provide a suitable foundation for future remedial actions. In general, removal actions should not interfere with future remedial actions, nor should proposed actions eliminate any feasible remedial alternatives.

VI. SUMMARY OF COSTS

Provide a summary of costs, including a breakdown of costs for both the current ceiling and the proposed ceiling. Detail the estimated total project ceiling in an itemized breakdown of the following cost categories that comprise the ceiling. This includes extramural costs allowed under the RA's $2,000,000 authority (these consist of cleanup contractor costs, letter contracts with States and other commercial entities, and site-specific IAGs); TAT costs; EPA intramural costs; Contract Lab Program analytical costs; and ERT/REAC costs. An example of how the total project ceiling should be broken down is provided on the following page.

Summary of Costs		Current Ceiling	Proposed Ceiling
Extramural Costs			
Extramural Cleanup Contractor (includes ERCS, Mini-ERCS, Subcontractors, Letter Contracts, Alternative Technology Contracts, IAGs with other Federal agencies, etc; contingency can be 10-20%.)		$669,600	$1,549,600
	(20% contingency)	167,400	387,400
		$837,000	$1,937,000
TAT costs		10,000	10,000
CLP analytical services		20,000	20,000
ERT/REAC		20,000	20,000
Subtotal Extramural Cost		887,000	1,987,000
15% Contingency of Above Costs (round to nearest thousand)		133,050	298,050
Total Extramural Costs		$1,020,050	$2,285,050
Intramural Costs			
Intramural Direct Costs (HQ, ERT and Region)		19,000	19,000
Intramural Indirect Costs*		33,000	33,000
TOTAL PROJECT CEILING ESTIMATE		$1,072,050	$2,337,050

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* Formula for calculating indirect costs:

Region-Specific Indirect Cost Rate X Estimated Regional Direct Labor Hours = Indirect Costs

Regional indirect cost rates are provided in the Comptroller Policy Announcement No. 87-15, "New Method for Determination of Indirect Costs in Superfund Removal Project Ceilings" (7/15/87).

VII. RECOMMENDATION

The purpose of this section is to briefly present the Region's recommendations, rationale and project costs. For example, "Because conditions of the site meet one of the two CERCLA 104(c) exemptions as described herein, I recommend that you approve an exemption from the $2 million limitation to allow continued removal activities at the Site, City, State. In addition, I recommend an increase in the ceiling to $X, of which $Y are for the extramural cleanup contractor costs (Regional allowance).

Approve: ______________________________ Date: ____________
(Name and Title)

Disapprove: ______________________________ Date: ____________
(Name and Title)

Attachments

APPENDIX 13

REQUEST FOR SIGNIFICANT CHANGE IN THE SCOPE OF RESPONSE ACTION MEMORANDUM (MODEL)

MODEL REQUEST FOR SIGNIFICANT CHANGE IN SCOPE OF RESPONSE

The purpose of Appendix 13 is to provide OSCs with a sample format that can easily be followed to request approval of a significant change in scope of work and redirection of funds when there is no change in total project ceiling. Changes to a project scope of work that increase the total project ceiling will be approved/documented in a ceiling increase request (Appendix 10).

I. HEADING

Date: Month/Day/Year

Subject: Request for the Redirection of Approved Funds for the
Site, City, State
ACTION MEMORANDUM

Site/Spill-ID:

Category of Removal: All removal actions are considered time-critical unless otherwise indicated (e.g., classic emergency or non-time-critical)

National Significance: Indicate whether the removal is of national significance

From: On-Scene Coordinator

To: Regional Administrator

Thru: Regional Division Director, as appropriate

Note: If the removal action was initially approved by HQ, or if the removal action has since exceeded the $2 million limit, the Action Memorandum is addressed to the AA, OSWER from the RA, through the Director, OERR and to the attention of the Director, ERD.

II. ISSUE

Briefly state that this is a request for changing the scope of the response requiring the redirection of approved funds necessary for the completion of the removal action. Include the total amount of funds initially approved; the amount to be redirected and the source (e.g., to be redirected from the extramural cleanup contractors); and indicate where the funds will be applied (e.g., an increase in TAT and CLP ceilings).

III. BACKGROUND

The primary purpose of this section is to substantiate the need for a significant change in the scope of work. The information provided should be brief and must include a description of the incident, the key events leading to the request, and an estimated project schedule. In order to provide additional information, OSCs should include, as an attachment to this request, a copy of all the approved Action Memoranda for the site.

A. Incident/Response History

Briefly discuss the background/history of the site including: NPL status; current site conditions (e.g., staging and packing of drums); who initiated action and when (for example, EPA or the State); the date action was approved in the initial removal Action Memorandum and by whom; the actions initially approved; and actions to date.

B. Site Conditions

Briefly describe the conditions or situations that have led to the request for an approval of change in scope and a redirection of funds (e.g., initially incineration was identified as the sole method of disposal; however, once incineration began, test results indicated that it was not feasible to incinerate all of the waste and some would have to be disposed of off-site). Include a chronological description of steps taken to alleviate the conditions or situations leading to this request. In addition, be sure to identify any key problems or complications that have developed or are anticipated.

IV. PROJECT SCHEDULE

List and briefly describe all the approved project tasks remaining to be accomplished for completion of the removal action. Also, where appropriate, estimate the date the remaining actions are to be completed. For example, finalize agreements with off-site disposal facility by XYZ date, or complete Phase II sampling/analysis of waste.

V. COST SUMMARY

Provide a cost summary, including: cost categories, present ceiling, costs to date, and requested ceiling. For example:

Cost Category	Present Ceiling	Costs to Date	Requested Ceilings
Cleanup Contractors	$387,000	$360,000	$375,000
TAT	15,000	5,000	25,000
CLP	18,000	12,000	20,000
Intramural	35,000	32,000	35,000
TOTAL PROJECT	$455,000	$409,000	$455,000

VI. RECOMMENDATION

The purpose of this section is to briefly present the Region's recommendation for a redirection of approved funds. For example, "I recommend that the TAT and CLP portions of the total project ceiling be re-established at $25,000 and $20,000, respectively, with no increase in total project ceiling. You may indicate your approval or disapproval by signing below."

Approve: ______________________ Date: ______________________
(Name and Title)

Disapprove: ______________________ Date: ______________________
(Name and Title)

APPENDIX 14

SUMMARY OF MEMORANDA OF UNDERSTANDING (MOU) FOR USCG, ATSDR AND FEMA

SUMMARY OF MEMORANDA OF UNDERSTANDING FOR USCG, ATSDR AND FEMA

United States Coast Guard

The Memorandum of Understanding (MOU) between the United States Coast Guard (USCG) and the Environmental Protection Agency (EPA) establishes accounting, contracting and fund management control procedures of USCG response actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and EPA response under Section 311 of the Federal Water Pollution Control Act of 1972 (FWPCA), as amended. The MOU between EPA and the USCG is currently being revised to incorporate provisions of E.O. 12580 and SARA.

Agency for Toxic Substances and Disease Registry

EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) have developed a Memorandum of Understanding (May 28, 1985) to define and coordinate joint and respective responsibilites under CERCLA and the NCP. The MOU establishes policies for conducting response and non-response health activities related to releases of hazardous substances.

Under the MOU, ATSDR's major responsibilities include evaluation of populations with current or potential exposure to waste sites, development of health advisories, and follow-up investigation of populations to evaluate future health effect. EPA's major health-related responsibilities are risk assessment and risk management.

Federal Emergency Management Agency

The Memorandum of Understanding (April 5, 1985) between the United States Environmental Protection Agency (EPA) and the Federal Emergency Management Agency (FEMA) describes major responsibilities and outlines areas of mutual support and cooperation relating to relocation activities associated with response actions pursuant to CERCLA, Executive Order 12580, and the NCP. The MOU between EPA and FEMA is currently being revised to incorporate provisions of E.O. 12580 and SARA.

In the course of CERCLA response actions, FEMA is responsible for the permanent relocation of residents, businesses, and community facilities and/or temporary evacuation and housing of threatened individuals. Separate interagency agreements (IAGs) between EPA and FEMA will be developed to address both general and specific relocation activities. Such IAGs will be in conformance with the general policies, roles and responsibilities of each agency.

APPENDIX 14

APPENDIX 15

SAMPLE POLREPS

PROGRESS POLREP

I. HEADING

Date: Month/Day/Year
From: OSC
To: Director, ERD
Subject: Site name, City, State
POLREP No: POLREP Number (e.g., POLREP 30)

II. BACKGROUND

Site No: Site number
D.O. NO: Delivery Order number
Response Authority: Indicate whether response authority is CERCLA, 311k or other.
NPL Status: Indicate whether site is non-NPL, proposed NPL or final NPL.
Start Date: Indicate the Month/Day/Year that authorized on-site removal activity began.

III. RESPONSE INFORMATION

A. Situation

Describe the site, including information pertaining to site conditions, weather (if pertinent), media activity and other relevant factors. Briefly discuss the status of ongoing response activities.

B. Actions Taken

Describe response activities undertaken since last POLREP, including enforcement activities.

C. Next Steps

Describe plans for actual on-site activity connected with cleanup, including activity relevant to PRP search or other enforcement activities and planned meetings with local/regional environmental or enforcement agencies.

D. Key Issues

Identify any problem areas.

IV. COST INFORMATION

Provide detailed, current cost information for the site. Cost information should be broken down into amount budgeted, total cost to date and amount remaining categories. The categories listed below are examples of cost information that OSCs should provide. To the extent practicable, all expenditures relevant to the site should be noted in the POLREP. OSCs should also indicate if any need for future funding is anticipated.

	Amount Budgeted	Cost To Date	Amount Remaining
Cleanup Contractor			
EPA/TAT			
CLP Analytical Services			
ERT/REAC			
Regional Laboratory Services			
IAGs			
Intramural (HQ and Regions)			
Letter Contracts			
TOTAL			

INITIAL POLREP

I. HEADING

Date: Month/Day/Year
From: OSC
To: Director, ERD
Subject: Site name, City, State
POLREP: POLREP 1

II. BACKGROUND

Site No: Site number
D.O. No: Delivery Order number
Response Authority: Indicate whether response authority is CERCLA, 311k or other.
NPL Status: Indicate whether site is non-NPL, proposed NPL or final NPL.
Start Date: Indicate the Month/Day/Year that authorized on-site removal activity began.
Approval Status: Indicate whether the action has been approved by the OSC, RA or HQ.
Status of Action Memorandum: Indicate when HQ can expect to receive the Action Memorandum.

III. INCIDENT INFORMATION

A. Type of Incident

Indicate the type of incident which ocurred (e.g., Active Production Facility, Inactive Production Facility, Active Waste Management Facility, Inactive Waste Management Facility, Midnight Dump, Transportation-related, Other).

B. Preliminary Assessment Results

Briefly discuss the results of the Preliminary Assessment.

C. Situation

Describe the site, including information pertaining to site conditions, weather (if pertinent), media activity and other relevant factors. Also indicate what response actions have already been initiated.

IV. RESPONSE INFORMATION

A. Status of Actions

Indicate whether EPA or State enforcement actions have been initiated, whether OSC invoked $50K response authority and what actions EPA has already taken, if any. Indicate whether State and/or local governments requested EPA assistance and the specific agencies/officials making the request. Summarize any "first responder" or other actions these or other agencies have taken to protect public health and the environment. Indicate State/local cooperation in assessing the release and threat, and whether State and local government personnel remain at the site.

B. Next Steps

Describe plans for actual on-site activity connected with cleanup, including activity relevant to PRP search or other enforcement activities and planned meetings with local/regional environmental or enforcement agencies.

C. Key Issues

Identify any problem areas.

V. COST INFORMATION

Provide detailed, current cost information for the site. Cost information should be broken down into amount budgeted, total cost to date and amount remaining categories. The categories listed below are examples of cost information that OSCs should provide. To the extent practicable, all expenditures relevant to the site should be noted in the POLREP.

	Amount Budgeted	**Cost To Date**	**Amount Remaining**
Cleanup Contractor			
EPA/TAT			
CLP Analytical Services			
ERT/REAC			
Regional Laboratory Services			
IAGs			
Intramural (HQ and Regions)			
Letter Contracts			
TOTAL			

SPECIAL POLREP

I. HEADING

Date: Month/Day/Year
From: OSC
To: Director, ERD
Subject: Site name, City, State
POLREP No: Indicate POLREP number and that this is a Special POLREP for the site.

II. BACKGROUND

Site No: Site number
D.O. No: Delivery Order number
Response Authority: Indicate whether response authority is CERCLA, 311k or other.
NPL Status: Indicate whether site is non-NPL, proposed NPL or final NPL.
Start Date: Indicate Month/Day/Year that authorized on-site removal activity began.

III. INCIDENT INFORMATION

A. Nature of Incident

Describe the incident or change in circumstances which necessitated a special POLREP.

B. Situation

Describe the site, including information pertaining to site conditions, weather (if pertinent), media activity and other relevant factors. Note specifically how site conditions have changed since the last POLREP.

IV. RESPONSE INFORMATION

A. Actions Taken

Describe actions taken since last POLREP, including enforcement actions. Indicate what actions have been taken in response to the incident or change in circumstances.

B. Next Steps

Describe plans for actual on-site activity connected with cleanup, including activity relevant to PRP search or other enforcement activities and planned meetings with local/regional environmental or enforcement agencies.

C. Key Issues

Identify any problem areas. Indicate if a change in the scope of work has been necessitated by the incident.

V. COST INFORMATION

Provide detailed, current cost information for the site, noting specifically how the special incident has affected the projected cost ceiling or distribution of anticipated costs. Cost information should be broken down into amount budgeted, total cost to date and amount remaining categories. The categories listed below are examples of cost information that OSCs should provide. To the extent practicable, all expenditures relevant to the site should be noted in the POLREP.

	Amount Budgeted	**Cost To Date**	**Amount Remaining**
Cleanup Contractor			
EPA/TAT			
CLP Analytical Services			
ERT/REAC			
Regional Laboratory Services			
IAGs			
Intramural (HQ and Regions)			
Letter Contracts			
TOTAL			

FINAL POLREP

I. HEADING

Date: Month/Day/Year
From: OSC
To: Director, ERD
Subject: Site name, City, State
POLREP No: Indicate POLREP number and that this is the final POLREP for the site (e.g., POLREP 42 and FINAL).

II. BACKGROUND

Site No: Site number
D.O. No: Delivery Order number
Response Authority: Indicate whether response authority is CERCLA, 311k or other.
NPL Status: Indicate whether site is non-NPL, proposed NPL or final NPL.
Start Date: Indicate the Month/Day/Year that authorized on-site removal activity began.
Completion Date: Indicate the actual date that the clean-up contractor or the OSC demobilized, completing the scope of work in the Action Memorandum or subsequent notifications.
Site Status: Indicate whether site has been stabilized or cleaned up.

III. SITE INFORMATION

A. Situation

Describe the site, including information pertaining to site conditions, weather (if pertinent), media activity and other relevant factors. Include information on any O&M being conducted

B. Actions Taken

Describe response activites undertaken since last POLREP, including enforcement actions.

C. Next Steps

Indicate what actions, if any, are to be conducted after demobilization. If applicable, indicate whether Responsible Party or State will assume lead cleanup responsibility or conduct O&M.

IV. COST INFORMATION

Provide detailed final cost information for the site. Cost information should be broken down into amount budgeted, total cost to date and amount remaining categories. The categories listed below are examples of cost information that OSCs should provide. To the extent practicable, all expenditures relevant to the site should be noted in the POLREP. Final cost information should be as detailed as possible.

	Amount Budgeted	Cost To Date	Amount Remaining
Cleanup Contractor			
EPA/TAT			
CLP Analytical Services			
ERT/REAC			
Regional Laboratory Services			
IAGs			
Intramural (HQ and Regions)			
Letter Contracts			
TOTAL			

APPENDIX 16

REMOVAL ACTION ACCIDENT REPORT

REMOVAL ACTION ACCIDENT REPORT

1. Date and Time of Incident:
   Date of Report:
2. Site Name and Location:
   Prepared By:
3. OSC:
   Preparer's Phone No.:
4. Description of Incident:
5. Factors leading Up to Incident:
6. Site Work Relating to Incident (OSC Orders, TAT/Strike Team Oversight, Foreman's Orders):
7. Weather Conditions During Incident (Temperature, Humidity, Wind Direction and Speed, Precipitation):

8a. Injuries (Person, Role of Person On Site, Description of Injury):

8b. Exposure (Person Exposed, Substances Involved, Type of Exposure - Inhalation, Ingestion, Dermal):

8c. Medical Treatment (Paramedic, Physician, Hospital, Length of Stay, Estimated Cost):

9. Property Damage (Owner, Location, Description of Damages, Estimated Cost):

10a. Other Persons On-Site:

10b. Other Person's Roles/Activities On Site on Day of Incident:

APPENDIX 17

PROCEDURES FOR COST CALCULATION

PROCEDURES FOR COST CALCULATION AND PROJECT CLOSEOUT

For planned removals initiated prior to the effective date of the current NCP (February 19, 1986), States were required to contribute a cost share. This cost share can be composed of cash, verified State credits, and/or services, pursuant to the provisions of a Superfund State Contract (SSC). Such services must be authorized in advance by the OSC as being a necessary part of the cleanup action. Costs incurred by the State prior to the initiation or after the completion of the planned removal cannot be included in the cost share.

As soon as possible after completion of the removal action, the Region and the State should compute their respective site-specific allowable costs. Allowable costs are defined respectively in Section F.2 of Chapter III of this manual and Chapter 1 of the Federal Procurement Regulations, section 1-15.703.1. EPA's cleanup contractor costs will be based on the final invoices received by the Financial Management Division (FMD).

The State should submit its cost information in the form of a letter to the OSC. The letter should include the following information:

- Identification of the total amount being claimed
- Listing of the units of government that incurred the costs (e.g., State, county, local)
- The costs for each governmental unit in detail by cost element (e.g., labor, travel, equipment)
- Brief description of specific functions performed by each governmental unit as it pertains to the site (i.e., as specified in the SSC).
- A certification that the costs claimed have not been reimbursed under any other Federal program or grant, nor by non-Federal sources such as potentially responsible parties. This certification must be signed by the State's fiscal manager or the State agency's financial director.
- The complete name, address and telephone number of the State official who should receive a billing, if one is necessary.
- Other pertinent information, as appropriate.

The State's costs will be reviewed by the Region to make a determination of allowability under CERCLA. This review will consider the following specifications: that the costs claimed were necessary and reasonable for the specific action, and not a general expense required to carry out the overall responsibilities of the State Government; that the costs were authorized by EPA; that the costs were not prohibited by State/local law; and that they are not accountable to or included as costs of any other Federally-financed program.

EPA and the State discuss and resolve any questions about costs. The cost of the allowable State services then is added to EPA costs to determine the total project cost (TPC); the State's cost share is ten percent of this figure. The value of the State services will be subtracted from the ten percent cost share.

The following examples, which assume a ten percent cost share, are presented to help clarify this procedure:

	Site 1	Site 2
EPA Services	$450,000	$470,000
Allowable State Services	50,000	30,000
Total Project Cost	$500,000	$500,000
	x 10%	x 10%
Required State Cost-Share	50,000	50,000
Allowable State Services	-50,000	-30,000
	0= No cash contribution needed from State.	20,000 = State would owe this as a cash contribution (could also be satisfied with verified State credits)

	Site 3
EPA Services	$440,000
Allowable State Services	60,000
Total Project Cost	$500,000
	x 10%
Required State Cost-Share	50,000
Allowable State Services	-60,000
	-10,000 = State contributed services above and beyond the required cost share - not reimbursable

EPA will notify the State of these computations. If the State's allowable costs for services and verified State credits total less than ten percent of the TPC, a bill will be sent to the State for a cash contribution.

If the State's allowable costs for services and verified State credits are more than, or equal to, ten percent of the TPC, a letter acknowledging that the cost share has been met will be sent to the State and the verified State credit, if any, will be reduced by the amount used to satisfy the cost share. There will be no reimbursement to the State or increase in the verified State credits for State costs that exceed the cost share requirement.

All costs may be subject to audit by EPA's Office of the Inspector General. There is no statute of limitations as to when this audit may be done. If a discrepancy is found, arrangements will be made to reconcile it.

APPENDIX 18

"USE AND ISSUANCE OF ADMINISTRATIVE ORDERS UNDER §106(a) OF CERCLA" AND "ISSUANCE OF ADMINISTRATIVE ORDERS FOR IMMEDIATE REMOVAL ACTIONS"

* * * * *

Appendix number 18 contains a memorandum from Lee M. Thomas entitled "Issuance of Administrative Orders for Immediate Removal Actions," dated February 21, 1984, and an accompanying memorandum on issuance of Administrative Orders under section 106(a) of CERCLA.

Because distinctions between immediate and planned removals no longer are made, some of the concepts contained in these memoranda may be obsolete.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 21 1984

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONS

MEMORANDUM

SUBJECT: Issuance of Administrative Orders for Immediate Removal Actions

FROM: Lee M. Thomas
Assistant Administrator

TO: Regional Administrators, Regions I-X
Air & Waste Management Division Directors
Regions III, IV, VI, VII, VIII, X
Waste Management Division Directors, Regions I, V
Director, Office of Emergency and Remedial Response, Region
Toxics and Waste Management Division Director, Region IX
Environmental Services Division Directors, Regions I - X
Regional Counsel, Regions I - X

This memorandum sets forth guidance on issuing Administrative Orders for immediate removal actions under CERCLA. This guidance should be used in conjunction with the recently issued Guidance Memorandum on Use and Issuance of Administrative Orders under Section 106(a) of CERCLA dated September 8, 1983.

Since becoming the Assistant Administrator, OSWER, I have sought to implement a "balanced" CERCLA program which uses both the administrative and civil judicial enforcement provisions of the Act--as well as the Fund--to secure clean up of hazardous waste sites. One of my primary enforcement goals is to increase the use of Administrative Orders for immediate removals. Orders are particularly useful in immediate removal situations, since they can be issued quickly, can require discrete segments of work (e.g., surface cleanup) and carry the threat of additional damages and penalties in the event of non-compliance.

We estimate that Administrative Orders may be appropriate for a significant percentage of immediate removal situations. Increased resources will be provided to the Regions, and I expect the Regions to devote resources to accomplishing this goal of increased Administrative Orders for removals.

In addition, the Regions must develop a satisfactory organizational structure if the Administrative Order program is to succeed. The organization of enforcement personnel varies among the Regions. The majority of the Regions keep their "remedial" and "removal" personnel in different divisions. Since CERCLA enforcement has (until now) concentrated heavily on remedial sites, most regional technical enforcement personnel have been assigned to the remedial response units (generally, the Air and

Hazardous Material Divisions). Personnel responsible for immediate and planned removals have usually been assigned to the Environmental Services Division which, as a general rule, has not been assigned enforcement personnel.

Obviously, the ability of a Region to implement this new policy requires both close coordination among the immediate response staff and their colleagues in the technical enforcement and regional counsel offices and an organizational structure capable of developing and issuing quality orders. Regions that do not currently dedicate technical enforcement staff to their immediate removal program should assure that appropriate personnel are in place in the technical enforcement office to implement this policy and to handle the workload.

I. BACKGROUND

CERCLA identifies two types of response actions for which the Fund can be used: removal actions and remedial actions. The National Contingency Plan (NCP) further refines the former category into "immediate" and "planned" removals and describes the process and procedures for proceeding with these forms of response. (See Federal Register 31180; July 16, 1982). Please refer to the attached appendix for an outline of the relevant CERCLA and NCP provisions regarding removal activity, Administrative Orders and enforcement.

Because of the large number of sites which pose a health hazard, the Office of Emergency and Remedial Response (OERR) defines the category of immediate removals according to the immediacy and severity of the hazard to the public health or environment. These categories establish a guide for the purpose of assessing the length of time within which the Agency must respond to the event. Agency response to situations which require immediate response (e.g., threats of fire, explosion or spills) normally takes place in a matter of hours or one or two days at the most; Agency response to other situations (e.g., rusting barrels that have not yet begun to leak, holding ponds that may overflow with the advent of the rainy season) normally takes place during a period which may range from a week to a month.

This guidance is most applicable to the latter situation; i.e., the Regions should consider issuing Administrative Orders in situations when there is at least one week between the time the On-Scene Coordinator (OSC) determines that an immediate removal is warranted and the time that actual on-site response must begin.

Administrative Orders are a useful enforcement tool in these types of immediate removals situations, for the following reasons. First, they encourage private party response, particularly since it is OSWER policy to meet, if at all possible, with responsible parti after the Order is issued if a meeting is requested. The results of an OWPE analysis of 49 completed immediate removals indicate that the elapsed time between the request for funds and the start of site response ranged from eight days to more than three weeks for 24 of the sites. This clearly indicates that there is time to issue Administrative Orders in appropriate situations, and the process described in this memorandum can be implemented in as little time as a week, if necessary. Second, removals require discrete units of work (e.g., barrel or contaminated soil removal) which makes responsible party compliance and Agency compliance monitoring easier. Third, the costs of immediate removals are generally moderate; this increases the probability of private party compliance.

In the event of non-compliance with an Administrative Order, the Agency is prepared to quickly initiate a Fund-financed response and seek fines/treble damages from the responsible parties. Since the treble damages will be based on the Fund dollars expended, these situations are particularly amenable to establishing treble damage claims, which the Agency will seek to recover in its §107 cost recovery actions. (The average obligation for 110 prior immediate removals undertaken by the Agency was approximately $275,000). Issuance of Administrative Orders for these situations also may improve the equitable position of the Agency in subsequent cost recovery cases.

II. CRITERIA FOR ISSUING ADMINISTRATIVE ORDERS

First, of course, the Agency must meet the legal threshold that an imminent and substantial endangerment to public health or the environment may exist.[1] Information which can be used and evaluated by the OSC or his supervisor to make this determination include:

1. Notification in accordance with CERCLA §103 (a), (b) or (c)
2. Investigations by government authorities conducted pursuant to CERCLA §104 (e) or other statutory authority.

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[1] The Agency must be able to properly document and justify both its assertion that an immediate and significant risk of harm to human life or health or to the environment exists and its choice of the ultimate response action at a site in order to be able to oppose a challenge to the Order and to successfully litigate any subsequent cost recovery action. Adequate documentation consists of photographs samples, monitoring or other documented site analysis. The Agency should follow chain of custody procedures to maintain the integrity of samples taken at the site. Please refer to the Cost Recovery Guidance, issued August 26, 1983 for more detailed guidance. The Revised Superfund Removal Guidance to be issued in late February 1984 will also provide additional guidance on immediate removal assessments.

3. Notification of a release by a federal or state permit holder when required by the permit.
4. Inventory efforts or random/incidental observation by government agencies or the public.

If the facts reach the legal thresholds of CERCLA §106, several policy criteria for deciding whether to issue an Order for an immediate removal should be considered. The first of these is the amount of time available before site response must begin. This determination will usually be made by the OSC. An Order may be appropriate if there is a minimum of one week available for issuing the Order and meeting with the recipients (see further below) between the time of the decision to seek funds for the immediate removal and the initiation of on-site response. (Of course if an order can be issued in less than a week the Regions are not bound by the "one week minimum". However, the Regions should always attempt to have 48 - 72 hours available for the recipients to request and conduct a conference.)

A second policy criterion is the number of potential recipients of the Order and their financial viability. There should be a "manageable" number of responsible parties and they should be collectively capable of undertaking site response. The Regions will use their best judgement to decide what constitutes a "manageable" number of responsible parties and assess the capabil of the parties to undertake the response for any individual immediate removal situation. (For a more lengthy discussion of criteria to consider when issuing an Administrative Order, please refer to the Administrative Order guidance.) When there is a large number of potentially responsible parties, Orders need not be issued to all of the parties. In this type of situation the Region should issue the Orders only to those parties most likely to comply. The Region, however, is not precluded from issuing Orders to all the parties if it so desires.

These criteria are to be used as general guidelines for determining whether an Administrative Order should be issued for an immediate removal. The varying factual circumstances presented in any potential removal action mandate that each Region conduct this necessary factual analysis to decide the appropriateness of an Order.

III. PROCESS FOR ISSUING ADMINISTRATIVE ORDERS

The timely development and issuance of Administrative Orders for immediate removals will require effective coordination among the OSC, technical enforcement personnel and the legal counsel in both the Regions and Headquarters. OSWER will not dictate how the Regions must organize or adjust personnel in order to accomplish this task, but it will expect the Regions to have a system in place which is capable of implementing an administrativ order program for immediate removals.

The procedures for developing and issuing orders follow:

The decision by the OSC or his superior to request funds for an immediate removal also triggers the process for deciding whether to issue an Administrative Order.

The OSC will inform the technical enforcement branch (or other appropriate enforcement personnel if no separate branch exists) and the Regional Counsel that a request for a Fund-financed immediate removal is being developed. Appropriate personnel in OERR and OWPE should also be informed of this action. While the OSC and his staff prepare the 10-point document,[2] technical enforcement personnel and the Regional Counsel should begin to identify responsible parties and assess their financial ability to conduct site cleanup.

The OSC or the Regional Counsel will attempt to orally contact (with written follow-up) potentially responsible parties in order to secure private-party response in lieu of the Fund. While previous Agency policy was to proceed with Fund-financed response if the responsible parties refused to act, the Agency will now issue administrative orders in appropriate circumstances before initiating Fund action, so long as the site does not pose an unreasonable risk of harm to the public health, welfare or the environment.

Regardless of whether a responsible party agrees or not to undertake the removal, development of the 10-point document should proceed as usual. However, the OSC and technical enforcement staff (in consultation with the Regional Counsel) shall apply the criteria outlined in Part A (above) to recommend to the Regional Administrator whether to issue an Administrative Order. The decision to issue the order rests with the Regional Administrator, subject to the current delegations.

If the Regional Administrator decides to issue an Administrative Order, the Order will be drafted by technical enforcement personnel with the advice of the Regional Counsel. The technical information contained in the 10-point document will normally provide the basis for the Order's "Findings of Fact" while the Agency's intended response actions will serve as the remedy the recipient is required to implement.

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[2] Requests for less than $250,000 can be approved by the Regional Administrator while requests for more than $250,000 require the approval of OERR. (It is anticipated that within the month, the Regional Administrators will be delegated the authority to obligate up to $1 million for removal actions.) The ten point document itself must justify its cost estimates and be consistent with the NCP. With the issuance of the Revised Superfund Removal Guidance, the 10 point document will become an Action Memorandum.

Since Administrative Orders will normally be issued in situations in which site response is not required for at least one week, OSWER policy is to provide recipients when possible an opportunity to meet with Agency personnel to discuss the terms of the Order and the means for compliance. Therefore, the Order should include the following provisions:[3]

1. A statement of the imminent and substantial danger pursuant to §106 of CERCLA and the risk of harm under §300.65 of the NCP.
2. A statement of the authority of the issuing official (normally the Regional Administrator) to issue the Order and why the recipient is liable under §107.
3. The steps the recipient must take to comply with the order, (following the provisions of the ten-point document in order to be as specific as possible).
4. A mandatory timetable for performing and completing the response. (The timetable should include at least one short term interim deadline so the Agency will have the ability if necessary, to demonstrate non-compliance before the project completion date.)
5. A provision informing the recipient that his duty to obe the terms of the order takes effect 72 hours after he receives the order.
6. A provision informing the recipient that he may oral contact the Agency to request a conference on the Order. The recipient must follow up his oral request in writing.
7. A provision specifying a date certain by which responses (either oral or written) to the Order must be received.
8. A provision which states that EPA reserves the right to undertake the action if emergency circumstances dictate such action and that such action in no way relieves the parties of responsibility for the costs of such actions.
9. A provision which requires: proper chain of custody procedures to be followed for any testing and sampling, adequate recordkeeping of activities (so records may be used as evidence in any future enforcement case), cooperation from employees of any contractor who engages in site activity, and availability of such employees to the U.S. in preparation and trial of a subsequent enforcement case.

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[3] Refer to the general Administrative Order Guidance for examples of model orders and conference procedures.

Under a separate delegations memorandum to the Regions, the concurrence requirement will be waived for all Administrative Orders for immediate removals with obligations of $1,000,000 or less. Within two weeks of issuance of the Order, the Regions are to send a copy of the final Order to OWPE.

As a matter of policy, in order to increase the likelihood of compliance, the Agency encourages the convening of a conference with the recipients of an Administrative Order. Since Administrative Orders will generally be issued for immediate removal situations which do not require response in less than one week, the Agency will normally attempt to hold a meeting with the recipient if requested by the recipient. The conference should be convened on an expedited basis (e.g., within 72 hours after the Order is issued) if the recipient orally requests the conference. However, the Agency retains the right to "waive" a conference if immediate response is warranted because of deteriorating condition at the site. The Regional Administrator shall have the authority to decide whether to eliminate the conference prior to or following the issuance of the Administrative Order. If the Regional Administra waives the opportunity for a personal conference, a regional representative, must at least give the parties an opportunity to be heard by telephone before the effective date of the Order. In general, conferences concerning removal actions should be used to clarify the requirements of the Order rather than as an opportunity to negotiate the requirements.

The Agency must create a good administrative record of its meetings with the recipient of an Order for either enforcement of the Order or cost recovery after a Fund-financed cleanup. The Agency participants should prepare a written summary of the conference containing:

1. The date and participants.
2. A summary of the significant issues raised and arguments/ data used by the recipient to contest the Order.
3. The result of the conference (e.g. agreements reached with the recipient, indication from the recipient of an unwillingness to comply with the Order)

The presiding official, (designated by the Regional Administrator) must also prepare a statement which addresses any significant arguments raised by the recipient and recommends whether any modifications to the Order are warranted. (See the September 8, 1983 Administrative Order Guidance for a complete discussion of the procedures and "ground rules" for conducting the conference and the time frames for holding them.)

If the recipient agrees to undertake the stipulated response measures, the agreement may be in the form of a Consent Order. OSC will monitor compliance with the Order and recommend additional enforcement action if the terms of the Consent Order are breached. If the recipient does not agree to undertake the measures contained in the Order, the Agency will generally not refer a case to the Department of Justice to force compliance because of the time constraints presented by the emergency. Rather, the Fund will be used for site response and the recipient(s) will be sued for cost recovery--including punitive damages in appropriate cases.

IV. USE OF THE FUND WHILE THE ADMINISTRATIVE ORDER IS BEING ISSUED

Normally, once an Order has been deemed appropriate for an immediate removal situation, the CERCLA Fund shall not be used to undertake a federally-funded immediate removal during the time period in which the Agency develops the Order, issues it to the responsible party, and conducts the conference.

However, if site conditions deteriorate-- presenting a corresponding increase in the threat that the site presents-- the Fund can be used for response while the Administrative Order process continues. In such instances, the Regional Administrator can approve the use of Funds below $250K and request the Assistant Administrator, OSWER, to release funds if the response work will be greater than $250K.[4] The Administrative Order process should continue since the parties may undertake site response at the next convenient break in activi

Thus, if there are deteriorating conditions at the site, the OSC should continue all steps necessary for undertaking a Fund-financed response while the Order is being developed. The 10-point document should be prepared and receive the concurrence of all officials up through the Regional Administrator or the Director, OERR.

However, no actual obligation of Funds for site response will normally occur until after the Order has been issued and the conference has been held. Since the Order will only be issued in situations where an immediate response can be delayed, there will normally be time to see the Administrative Order process through to conclusion. The conference must be held within the time period specified in the Order (which will correspond to the time the Agency has before the response activity needs to begin). Since the timing of the obligation will vary according to the estimated time needed to mobilize equipment and personnel, the OSC should work closely with the technical enforcement and Regional Counsel staff during the drafting of the Order to assure that the time period established for issuing the Order is synchronized with the time requirements for site response.

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[4] If deteriorating conditions require the Fund to respond while the Order is still being issued, OSWER assumes that the Fund will take all response actions necessary at the site (e.g., remove all barrels, not merely those that may be about to leak).

If the conference does not result in private party response--or if changing conditions at the site require accelerated response--the Fund-financed immediate removal will take place. If Fund-financed activity does begin, the Order may be written to require the potential responsible parties to undertake site activity at the next convenient break point in activity. If the parties still fail to undertake the site response activity, enforcement efforts will emphasize cost recovery with the additional imposition of fines/penalties as appropriate.

V. COST RECOVERY

The Agency will normally not initiate a civil action in the event of non-compliance with an Order but instead will seek to recover costs and damages after a Fund-financed response. Therefore, while enforcement personnel are carrying out the Administrative Order process, they should also be aware of the requirements for a successful cost recovery action. They must be able to document the following factors (some of which are the same ones necessary for the issuance of the Administrative Order itself).

1. The need for the immediate removal (evidence of an imminent and substantial endangerment or threat of endangerment to public health, welfare or the environment)
2. Liability of the responsible parties (evidence to support the contention that the parties meet the liability standard of §107)
3. Proof that the Fund-financed response activity was "not inconsistent" with the requirements of the NCP.
4. Documentation of all eligible costs for site-specific Fund expenditures.

Enforcement personnel must assure sufficient documentation of these factors from the period in which the 10-point document is developed and Funds are obligated through the actual clean up of the site. These cost recovery requirements must be met regardless of whether there will be a simple cost recovery action (if no Administrative Order is issued) or an action for response costs plus damages (if the Order is not complied with). The Agency must assure that evidence is preserved for any subsequent enforcement action. Proper chain of custody procedures must be used for any sampling or testing, and adequate records of site activity must be kept. Employees of any contractor used for site activity must cooperate with and be made available to the U.S. in preparation and trial of any subsequent enforcement action. Enforcement, program and legal offices should work together throughout the case development.

VI. FOLLOW-UP

This guidance represents a substantial departure from prior practice, and I expect that it will take some time to implement. For these reasons, I will be reviewing all immediate removals referred to Headquarters for compliance with this guidance. In addition, for immediate removals under $250,000, I will ask the Directors, OWPE and OERR to review the compliance with this guidance quarterly, and to advise me accordingly.

Appendix

cc: Gene Lucero, OWPE
William Hedeman, OERR
Kirk Sniff, OECM
Dan Berry, OGC

GUIDANCE MEMORANDUM
ON
USE AND ISSUANCE OF ADMINISTRATIVE ORDERS
UNDER
SECTION 106(a)
OF CERCLA

APPENDIX 13

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

SEP 8 1983

MEMORANDUM

SUBJECT: Guidance Memorandum on Use and Issuance of Administrative Orders Under §106(a) of CERCLA

FROM: Lee M. Thomas
Acting Assistant Administrator for Solid Waste and Emergency Response

Courtney M. Price
Special Counsel for Enforcement

TO: Regional Administrators, Regions I-X
Regional Counsels, Regions I-X
Air and Waste Management Division Directors Regions I-X
Regional Superfund Coordinators
Director, Office of Waste Programs Enforcement
Director, Office of Emergency and Remedial Response
Associate Enforcement Counsel, Waste Division

I. Introduction

The administrative order authority which the Environmental Protection Agency (EPA) exercises under §106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Executive Order 12316 is one of the most potent administrative remedies available to the Agency under any existing environmental statute.

Section 106(a) of CERCLA authorizes the issuance of "such orders as may be necessary to protect public health and welfare and the environment," after notice to the affected state, upon a determination that "there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility." A fine not exceeding $5,000 per day may be imposed for willful violation, failure or refusal to comply with a §106(a) Order (Order), and punitive damages of up to three times the cost of clean-up of the site may be imposed under §107(c)(3) for failure, without sufficient cause, to properly provide removal or remedial action pursuant to such an Order. In view of the magnitude of these penalties, the Agency expects that the regulated community will comply with administrative Orders. At the same time, the Agency's obligation is to ensure that Orders are properly issued.

It is the current policy of EPA that, whenever possible, parties who have caused or contributed to a release or a threat of a release of hazardous substances at a site should rectify the problems at the site. This action is necessary to ensure that the Agency efficiently manages the limited funds available under CERCLA and to ensure that the maximum number of sites are addressed.

Accordingly, after the Agency discovers a site and in advance of completing a Remedial Investigation and Feasibility Study (RI/FS (and has conducted an endangerment assessment, or their equivalent), responsible parties normally will be sent a notice letter requesting them to clean up the site. Following completion of feasibility study, the Agency normally engages in discussions with responsible parties in an attempt to obtain promptly the agreement of such parties to voluntarily undertake the necessary response actions. If the discussions are successful, the terms of the agreement will be embodied in a judicial consent decree or a §106 administrative consent Order.

In circumstances where the Agency wishes to compel a responsi party to undertake the response actions, including instances where no settlement can be reached, the Agency will consider issuing a unilateral §106 Order in accordance with this guidance.

The administrative enforcement authority is an important component of the Agency's enforcement program authorized under CERCLA. This guidance is being issued to assist the regional offices in developing and maintaining an effective CERCLA administrative enforcement program. The effectiveness of the program will be enhanced as site remedies are implemented by Respondents in compliance with administrative orders, and as enforcement of Orders with which Respondents are not in compliance is successfully and expeditiously pursued by EPA. The Agency will aggressively defend judicial challenges to Orders and enforce instances of non-compliance to validate the CERCLA administrative enforcement program. Regional offices should issue Orders consist with the criteria and procedures contained in this guidance to ens the legal sufficiency of the program.

The §106 administrative order authority provides strong incentives for Respondents to undertake expeditiously response actions deemed necessary by EPA to ensure protection of public health or welfare or the environment. Therefore, Regional offices are urged to consider the use of unilateral CERCLA administrative orders in every case where compelling enforcement authority is necessary. Criteria are provided herein to assist regional offices in determining whether Orders are appropriate in any case. It is essential that a balanced CERCLA enforcement program is implemented by EPA, combining administrative and judicial enforcement authorites, to ensure protection of health and the environment from the hazards of releases or threats of releases of hazardous substances.

II. Requirements for Issuance and Scope of Section 106 CERCLA Orders

A comparison of §106(a) and §7003 of the Resource Conservation and Recovery Act (RCRA) reveals similarities in the two sections, and therefore many of the criteria for issuance of a §7003 Order also apply to §106 Orders.[1] In many situations, either Order would be appropriate. Where the hazardous substances are also "hazardous waste" under RCRA, the Order should cite the authority of both sections.

Section 106(a) of CERCLA provides as follows:

> In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened

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[1] Guidance on the use of RCRA §7003 administrative orders may be found in a memorandum entitled, "Issuance of Administrative Orders under Section 7003 of the Resource Conservation and Recovery Act" dated September 11, 1981.

> release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat... The President may also, after notice to the affected State, take such action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.[2]

In order for an Order to be issued, the following legal pre-requisites must be met:

A. Necessity for a Determination Based Upon Evidence

A determination must be made that, because of a release or threat of a release, an imminent and substantial endangerment may exist. This determination will depend upon documentary, testimonial, and physical evidence obtained through investigations and inspections. Other information concerning the nature of the threat posed by a site may already be contained in Agency files, such as data generated pursuant to §103 of CERCLA or the permit and notification sections of RCRA. The Order, therefore, must include a finding that an imminent and substantial endangerment may exist, in order to ensure that this statutory requirement is met. (See sample order, Appendix B, Finding No. 7).

2/ The President has delegated his authority under this Section to the Administrator of EPA and the U.S. Coast Guard by Executive Order No. 12316 dated August 24, 1981. EPA and the Coast Guard have entered into a Memorandum of Agreement dated October 9, 1981, that all site-related releases in the Coast Guard's jurisdictional areas (coastal zones, Great Lakes, ports and harbors) shall be the responsibility of EPA.

B. Necessity of Actual or Threatened Release of Hazardous Substances

Section 106 requires that the imminent and substantial endangerment be caused by "an actual or threatened release [3/] of a hazardous substance" from a facility. A "hazardous substance" is defined in Section 101(14) of CERCLA, and is generally any substance, waste or pollutant designated pursuant to Sections 307(a) and 311(b)(2)(A) of the Clean Water Act, Section 3001 of RCRA, Section 112 of the Clean Air Act, Section 7 of TSCA, or Section 102 of CERCLA. (Crude oil, fractions thereof, natural gas, and liquefied natural gas are exempted from statutory coverage.)

Whether a release from a facility is "actual" or "threatened" primarily depends upon temporal considerations. Actual releases should be observable in some form, either visually or through analysis showing contaminants present in samples of soil, water or air. A "threat" of a release, on the other hand, involves releases which have yet to occur or have yet to find their way into the environment. A bulging tank containing a hazardous substance in which pressure has built up, and a surface impoundment

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[3/] A "Release" is defined in CERCLA §101(22) as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping or disposing into the environment," with certain specific exemptions (e.g. release solely in work place; engine exhaust; release of certain nuclear material; and normal application of fertilizer).

which is about to overflow because of heavy rainfall, present obvious threats of a release. A threat is also presented by corroding or leaking drums containing incompatible wastes mingled in a common area. Accordingly, the determination of whether a "threat" of a release warrants issuance of an Order is a judgment decision to be made on a case-by-case basis.

The nature of both the hazardous substances present at the site and the release or threat of release should be set forth as findings in the order, together with the bases for such findings.

C. Necessity That Release or Threat of Release be From a Facility

The release or threat of release must be from a "facility," which is defined in CERCLA §101(9) as:

> (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publically owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel (a watercraft or other contrivance used, or capable of being used, as a means of transportation on water).

This definition of "facility" includes on-shore or off-shore sites, including land transportation facilities, from which releases or threats might originate. The Order must specify the physical location that is the source of the release.

D. Necessity for Existence of Imminent and Substantial Endangerment

Evidence presented to support the issuance of a §106(a) order must show "that there may be an imminent and substantial endangerment" to public health or welfare or the environment.

The words "may be" indicate that Congress established a standard of proof that does not require a certainty. The evidence need not demonstrate that an imminent and substantial endangerment to public health or the environment definitely exists. Instead, an Order may be issued if there is sound reason to believe that such an endangerment may exist.

Evidence of actual harm is not required. As the Court stated in Ethyl Corp. v. EPA, construing an endangerment provision in the Clean Air Act:

> The meaning of "endanger" is not disputed. Case law and dictionary definition agree that endanger means something less than actual harm. When one is endangered, harm is threatened; no actual injury need over occur. (541 F.2d 1 at 13, footnotes omitted, original emphasis, D.C. Cir., cert. den. 426 U.S. 941 (1976).)

It should also be noted while the risk of harm must be imminent in order for the Agency to act under §106, the harm itself need not be. (See the legislative history to the "imminent and substantial endangerment" provision of §1431 of the Safe Drinking Water Act, H. Rpt. 93-1185 at 35-36.) For example, EPA could act if there exists a likelihood that contaminants might be introduced into a water supply which could cause damage after a period of latency. One must judge the risk or likelihood of the harm by examining the factual circumstances, including, but not limited to: 1) nature and amount of the hazardous substance involved; 2) the potential for exposure of humans or the environment to the substance, and 3) the known or suspected effect of the substance on humans or that part of the environment subject to exposure to the substance.

Legal analyses of the concept of imminent and substantial endangerment can also be found in Reserve Mining Co. v. EPA, 514 F.2d 492 (8th Cir. 1975); U.S. v. Vertac Chemical Co. et al, 489 F.Supp. 870 (E.D. Ark. 1980); U.S. v. Solvents Recovery Service, 496 F. Supp. 1127 (D. Conn. 1980); U.S. v. Midwest Solvent Recovery, 484 F. Supp. 138 (N.D. Ind. 1980); U.S. v. Diamond Shamrock Corp., 17 E.R. 1329, (N.D. Ohio 1981); U.S. v. Price, 688 F. 2d 204 (3rd Cir. 1982); U.S. v. Reilly Tar and Chemical Corp., 546 F. Supp 1100 (D. Minn. 1982).

The nature of the endangerment and the basis for the finding of an imminent and substantial endangerment must be set forth in the Order. The link between the endangerment and the relief mandated by the Order should also be evident.

E. Notice to Affected States

Finally, before an Order may be issued, the "affected state" must be given notice of the Agency's intention to issue the Order.

The Agency is not held to a statutory period of time for notice. Normally, written notification to the state should precede federal action by at least one week. Circumstances may arise, however, where rapid response at a site is necessary. In such cases, issuance of an Order may follow an abbreviated notice period or even a telephone call made by EPA to the Director of the agency responsible for environmental protection in the affected state. Written confirmation must follow such telephone notice.

As indicated above, the notification should be directed to the Director of the state agency having jurisdiction over hazardous waste matters. A suggested form for a notification letter is attached to this memorandum as Appendix A. This form also provides the format for oral notice.

An "affected state" is interpreted to be the state where the facility is located from which the discharge is being released or threatens to be released, and in which the response activity required by the proposed order will be taken. In some cases, this may involve more than one state, such as where the facility is located near the border of a state and the hazardous substances have migrated from the facility located in one state into another state(s). In those cases, all of the states in which the hazardous substances are found and in which response activity may be performed pursuant to the order should be notified.

III. Persons To Whom an Order May Be Issued

Section 106 does not specify any person or persons to who an Order may be issued, but permits the issuance of "such orders as may be necessary..." Section 104(a), however, refers to the "owner or operator" or "other responsible party" as the persons to whom the Agency could look to determine whether clean-up of a site will be done properly before expending CERCLA funds. Section 107(a), designating those who shall be liable for response costs, specifies present owners and operators of a facility, persons who were owners and operators at the time of disposal of a hazardous substance, and generators and certain transporters who, according to available evidence, contributed hazardous substances to the facility. It follows that those same persons could be recipients of an Order issued under Section 106(a), (see U.S. v. Outboard Marine Corp., 556 F. Supp. 54, 57 (N.D. Ill. 1982). In addition, in appropriate cases, it may be possible to issue orders to parties other than those listed in Section 107(a), if actions by such parties are necessary to protect the public or the environment.

IV. Criteria for Issuance of §106 Orders

Other parts of this guidance document examine the legal requirements for issuing an Order. This section's purpose is to list specific factors which favor the use of Orders over other possible enforcement responses. These factors include:

- Responsible parties' financial status
- Number of potentially responsible parties
- Certainty of the necessary response action
- Agency's readiness to litigate the merits of the Order

The theme common to these factors is that Orders should be issued in those situations in which compliance with the terms of the Order is feasible, i.e., where the Respondents are in a position to perform the ordered response actions within specified time periods. This does not mean EPA must make a pre-issuance determination that Respondents will comply with an Order, but rather that compliance is practicable. If the Agency does not anticipate compliance with an Order it is considering issuing, the use of the Order may serve only to delay direct injunctive action under §106 or the initiation of Fund-financed response. On the other hand, the Agency may wish to issue an Order in any situation where the needed response action and the liability therefor are clear and straight-forward, so that refusal to comply with the terms of the Order would not, in all probability, be with "sufficient cause" (CERCLA §107(c)(3)). Such refusal would render the Respondent liable for civil penalties or punitive damages in the event of federal cleanup.

A. Responsible Parties' Financial Status

Before an administrative order requiring remedial work is issued, the Agency should assess, to the extent possible, whether the responsible party has sufficient financial resources to comply with the Order. Financial information is available from several sources:

- Agency files contain financial information collected as part of the identification of parties responsible for the hazards posed by sites on the National Priorities List.

- The Securities and Exchange Commission (SEC) requires publicly traded companies to submit detailed financial statements. This information is publicly available. (Consult NEIC'S manual entitled "Identifying Responsible Parties" for additional information on obtaining SEC file
- Responsible parties may submit financial information to the Agency during discussions or negotiations held prior to the issuance of an Order.

In addition, NEIC can provide further information on Respondents' financial status.

B. Number of Responsible Parties Subject to the Order

For two primary reasons, the success of Orders for remedial action is enhanced where there are relatively few responsible parties.

1) Coordination of Response Action

An Order issued to multiple Respondents who are jointly and severally liable generally will not allocate individual clean up responsibilities.4/ Instead, the Order will require the same response action to be conducted by each responsible party. Multiple parties must organize and coordinate their response to ensure compliance with the Order's requirements. Thus, compliance with Orders may depend upon group agreement

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4/ However, the Agency may issue an Order to a Respondent requiring a response to a discrete, separable aspect of the hazard at a site, notwithstanding the existence of other responsible parties or other less divisible problem areas.

on each member's share of the response cost. In a large group of responsible parties, it may be difficult for the group to develop a consensus on individual liability and perform response activities as quickly as necessary to abate imminent hazard conditions at a site. Accordingly, issuing Orders to all responsible parties may not be appropriate where there are a large number of parties who are unlikely to agree on a concerted response. Instead, the Agency will pursue judicial remedies or consider issuing Orders to a selected subset of responsible parties.

Even in situations where Orders are issued to a large number of parties, Agency policy, which should be reflected in the terms of the Order, is that each Respondent is individually liable for compliance with the Order's requirements. Individual liability also extends to penalties and punitive damages imposed by CERCLA for failure to comply with the Order.

2) Supervision

After an Order is issued, the Agency conducts compliance monitoring at the site to ensure that responsible parties comply with the terms of the Order. Although no maximum number of responsible parties can be specified as optimum, it is clear that the Agency's oversight responsibility is most effectively accomplished where there are a limited number of responsible parties.

C. Specificity of the Necessary Response Action

In order to minimize the potential for confusion between Respondents and the Agency concerning the required response action, Orders should be used in situations where the nature of the required response action has been relatively precisely identified. Orders are normally better suited to mandating discrete tasks such as drum removals rather than less exact actions such as planning. Otherwise it may be difficult for the Agency to supervise compliance activities, and for responsible parties to reach agreement on a compliance plan. In most cases, information sufficient to describe the required response actions will be generated by the RI/FS.

An Order should contain the following elements (see Appendix B):

- The steps the Respondent must take to comply with the Order;
- The effective date of the Order;
- A mandatory time-table for completion of remedial work; and, where appropriate,
- A statement to the effect that other actions or orders may follow.

Specific remedial action Orders benefit both the Agency and responsible parties. Responsible parties are provided clearly defined compliance standards which will facilitate agreement among the responsible parties on a remedial plan. If the responsible parties then determine that the remedial work is best accomplished by a third party contractor, the Order provide a basis for their contract negotiations.

Specific Orders benefit the Agency by reducing the difficulty of supervision and judicial enforcement. In noncompliance situations, the Agency may seek to enforce an Order in court. A specific Order provides the court with Agency-articulated standards by which to judge the responsible party's non-compliance with its terms. Therefore, EPA should make every effort to clearly articulate the response activities required by an Order.

D. Agency's Readiness to Litigate the Merits of the Order

After the Agency issues an Order, the respondent may seek judicial review to stay the Order. Respondents may challenge their liability or the appropriateness of the remedy specified in the Order. On the other hand, the Agency may promptly seek to enforce the Order in court. In light of these possibilities, the Agency must be ready to defend the Order in court at the time it is issued. This means that the site problem, the reasonableness of the required response, evidence of liability, and the Agency's response to issues raised by the recipient must be thoroughly documented, and that the documentation be organized and easily retrievable. The documentation will constitute the administrative record for any litigation.

E. Competing Considerations

The absence of the factors listed above may argue in favor of pursuing a judicial or Fund-financed, rather than an administrative, remedy. For example, EPA should not normally issue an order if the necessary response actions have not been clearly identified. In addition, Agency enforcement personnel should strongly consider the judicial course of action if:

- the responsible parties have violated provisions in several environmental statutes;
- the opportunity for public comment on the terms of a settlement agreement warrants the use of a judicial consent decree, (where there is a 30-day comment period before the decree is finalized) 5/; and
- there is a need for long term court oversight of a settlement agreement, (such as in cases where an agreement calls for separately enforceable response milestones prior to completion of the cleanup).

V. Orders Relating to Removals and Remedial Actions

Guidance on conducting removal actions issued by the Office of Emergency and Remedial Response (OERR) divides the statutory concept of removals into "immediate" and "planned" removals.

A. Immediate Removals

Immediate removal actions are to be taken only if a response is needed within a relatively short time frame to prevent or mitigate significant harm to human health or the

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5/ However, it should be noted that the Agency is exploring mechanisms which provide for public comment on both unilateral and consent administrative Orders. Guidance on this matter will be provided at a later date.

environment, and such action will not otherwise be provided on a timely basis.

Orders may be used to compel various immediate removal measures, including:

1. Suspension of activities which aggravate an existing release or substantial threat of a release (e.g., active use of a storage tank judged by the OSC to be in imminent danger of failure).
2. Suspension of activities which interfere with Federal removal actions (e.g., plant traffic in area of cleanup).
3. Movement or non-movement of a transport vehicle (railway tank car, tank truck, tank vessel) which is the source of a release or substantial threat of a release.
4. Measures to limit access, such as fencing.
5. Use of readily available equipment, owned by the responsible party, to contain or remove a release during the initial stages of a response before the OSC is able to obtain comparable equipment from other sources.
6. Dikings; construction of berms; or removal of the hazardous substance to an approved facility.

(This list illustrates various uses for an Order; it is not an exclusive compendium.)

Section 106(a) Orders, both in immediate and non-immediate situations, must contain a statement notifying the party of EPA's authority and the liability that may be incurred by failure to comply. As specifically as possible the Order prescribes the response activity and sets the date for its completion. To ensure enforceability of the Order, EPA should not undertake its own CERCLA-funded response activity during the period of time given to the party to respond, unless (i) such CERCLA-funded response activity becomes necessary due to the immediacy of the release or threat of release or (ii) the Respondent formally and unequivocally states an unwillingness to comply with the Order. In the event the party undertakes response activity, the OSC should remain on-site to ensure that the work is being conducted in accordance with the Order.

B. Planned Removals and Remedial Actions

Planned removal situations are those that allow several days or weeks to execute the response. Remedial actions, on the other hand, are generally those intended to provide a permanent resolution to the release and require a longer time and more expensive efforts to implement.

As in the case of immediate removals, an Order is available to compel response measures routinely taken during planned removal and remedial actions. "Removal activity" includes assessment programs to evaluate the nature of the problem, and removal of material from the site. "Remedial actions" are those consistent with a permanent remedy, and include such activity as capping the area, trenching, and provision of an alternate water supply.[6] EPA's position is that any activity that the Government might undertake at a site - from planning and studies to complete cleanup-could be ordered pursuant to §106(a). Of course, the issuance of more than one Order may be necessary if the cleanup is performed in stages, or if additional responsible parties become known to EPA who should participate in the cleanup.

VI. Procedures for Issuance of §106(a) Orders.

CERCLA designates the President as the primary official responsible for taking response and enforcement action under the Act. The authority to issue administrative orders under §106(a) has been delegated to the Administrator of EPA by Executive Order No. 12316, and redelegated by the Administrator to the Regional Administrators and the Assistant Administrator for Solid Waste and Emergency Response (AA-OSWER). The RAs and the AA-OSWER must consult with the Associate Administrator for Legal and Enforcement Counsel (AA-OLEC) prior to exercising this authority, and the RAs must obtain advance concurrence from the AA-OSWER. (See Delegations Manual: 14-14.) The AA-OLEC has

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6/ See §101(23) of CERCLA for definition of "remove" or "removal", and §101(24) of CERCLA for definition of "remedy" or "remedial action". Those definitions contain detailed examples of the types of activities that fall within these categories.

redelegated the consultation authority to the Associate Enforcement Counsel-Waste and the Regional Counsels. The AA OSWER has redelegated his advance concurrence authority to the Director, Office of Waste Programs Enforcement (OWPE). The Office of Waste Programs Enforcement will develop and issue criteria in separate guidance which will be used to evaluate circumstances under which this advance concurrence requirement will be waived on a Region by Region basis. Regional offices are expected to develop strong administrative enforcement programs, on an expeditious schedule, which will permit them to initiate and issue legally and technically adequate administrative orders with only prior notice to Headquarters.

A. Planned Removals and Remedial Actions

For planned removals and remedial actions, Orders are drafted by the Regional program office with the cooperation of the Regional Counsel's office. The draft Order is forwarded to the Office of Waste Programs Enforcement for review and concurrence. The Regional Administrators will usually issue the Order and provide prior notice of the action to the state.

B. Immediate Removals

For those Orders which require emergency or quick handling, usually in response to situations warranting an immediate removal, the following approval sequence will be used:

The Regional Administrator first must determine whether to issue an Order based on communication with the OSC and consultation with Regional Counsel. The Region then prepares an order with any supporting information and electronically transmits the material to the Office of Waste Programs Enforcement for review and concurrence. Notification to the State of our intent to issue the Order should be accomplished orally, and followed up by formal written notice.

VII. Opportunity to Confer

Agency policy is to offer parties to whom EPA has issued a unilateral §106 Order an opportunity to confer with the Agency concerning the appropriateness of its terms and its applicability to the recipient. The conference will help EPA ensure that it has based its Order on complete and accurate information and help EPA and Respondents reach a common understanding of how the Order should be implemented or modified. The procedures for exercising this option are communicated to respondents through the text of the Order itself. (See sample Order, page 4 of Appendix B.)

A. Planned Removals and Remedial Actions

Each Order will specify a date when the Order becomes effective. For actions other than immediate removals, the effective date should ordinarily be twenty calendar days from the day the Order is received by the Respondent. Certain Orders, such as those requiring that long term remedial actions be taken, may warrant a more extensive examination of the facts. In such cases, the Order may specify an effective date more than twenty days removed to permit the Respondent an opportunity to discuss th Order with the Agency beyond that accorded by the procedures set forth in Subpart C below.

If the Respondent seeks to confer with the Agency about the Order, the Respondent must provide written notification to the EPA official listed in the Order within ten calendar days of the date of receipt. The conference should be scheduled and held as soon thereafter as practicable, but prior to twenty days from the date the Order was received by the Respondent.

B. Emergency Situations

The applicable time periods for the effective date and for requesting a conference may be shortened, (e.g., to 72 and 48 hours respectively), or the conference procedures may be eliminated entirely, if the immediacy of the hazard posed by a site and other surrounding circumstances so warrant. In the former situation, the Order should permit the Respondent to request a conference orally, later followed by written notification.

C. Conference Procedures

The conference will normally be held at the appropriate EPA Regional office and will be presided over by the Regional Administrator's designee. However, other arrangements may be agreed to for the sake of convenience to the parties. At the conference, EPA should be prepared to provide the Respondent with information sufficient to explain the basis for the Order and to promote constructive discussions. The Respondent will have the opportunity to ask questions and present its views through legal counsel or technical advisors. The schedule and agenda for the conference will be left to the discretion of the EPA official leading the conference, as long as the Respondent receives a reasonable opportunity to address relevant issues.

Following the conference, a written summary of the proceeding must be prepared, signed by the Agency official who presided over the conference. The written statement should contain:

- A statement of the date(s) and attendees of any conference(s) held; and
- A description of the major inquiries made and views offered by the Respondent contesting the terms of the Order.

In addition, the presiding official must prepare a statement which addresses the significant arguments raised by the Respondent and which recommends whether and how the Order should be modified, together with the reasons therefor.

D. Modification, Revocation, or Stay of the Order

Based upon a review of the file upon which the Order initially was based, any probative information or argument proffered by the Respondent following receipt of the Order, and the recommendation of the presiding official, the issuing official may modify or revoke the Order. Any modification to the Order must be communicated to the Respondent as part of a copy of a written statement containing the elements listed in Subpart C above. The original should be kept in the Agency files along with the evidence supporting the order, copies of written documents offered in rebuttal by the Respondent during the conference, and a copy of the request for a conference.

The issuing official may also stay the effective date of the Order if the conference process could not be completed within the specified time period. Before substantially modifying or revoking an Order, the issuing official must consult with the appropriate Headquarters or Regional counsel and obtain the advance concurrence of the Director, OWPE.

VIII. Procedure If Order Is Not Obeyed

In the event the party to whom the Order is issued does not comply with its terms, the Agency must quickly decide whether to attempt to enforce the Order by referring the case to the Department of Justice for filing of a suit to force compliance, or whether to undertake cleanup of the site by use of CERCLA funds, and then file suit against the party for reimbursement of the costs expended plus statutory penalties for failure to comply with the Order.

The determination of which action to pursue depends on the type of response action to be taken. Obviously, if an immediate removal action is required by the hazard at the site, EPA will clean up the site and attempt recovery of costs and penalties in a subsequent recovery action. The same course of action applies to a planned removal where the removal action must be quickly undertaken and cannot await the filing of a suit. However, planned removal or remedial responses which require an extended period of time to perform, and in which initiation of action may be delayed for a brief period without jeopardizing human health and the environment, may allow sufficient time for the filing of a suit to enforce the Order, or at least that portion of the Order which calls for the planned removal or remedial action to be taken.

Other factors which may enter into this determination include the strength of evidence and the financial ability of the party to perform the desired response activity. The decision of which option to pursue is initially to be made by the Regional Administrator, in the same manner and using the same procedures as previously prescribed for any other enforcement action. The Regional Administrator's recommendation is then forwarded to Headquarters for action.

IX. Note on Purpose and Use of This Memorandum

The policy and procedures set forth herein, and internal office procedures adopted pursuant hereto, are intended solely for the guidance of attorneys and other employees of the U.S. Environmental Protection Agency. They are not intended to nor do they constitute rule-making by the Agency, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take any action which is at variance with the policies or procedures contained in this memorandum, or which is not in compliance with internal office procedures that may be adopted pursuant to these materials.

Attached to this memorandum as Appendices A and B are

- A sample letter to a state providing notification of the Agency's intent to issue a §106 Order; and
- A sample Order.

If you have any questions or problems concerning any matter contained herein, please call the Director, OWPE, (382-4814), or Russell B. Selman (426-7503) or Steve Leifer (382-4548) of the Office of Legal and Enforcement Policy.

Attachments

Appendix A

STATE NOTIFICATION LETTER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. R. Jones
State Agency
Division of Environmental Control

Dear Mr. Jones:

Enclosed for your information is a copy of an order [stamped "DRAFT" and "CONFIDENTIAL"] that the Agency intends to issue on or after [date], to the XYZ Company, pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (42 USC 9606). The order requires certain activities to be taken at the company's site located at [location]. Please refer to the enclosed copy of the proposed order for the specific actions required of the company and the time within which such actions must be taken. If you have any comments or questions concerning the order, please contact [EPA official] at [office].

Sincerely yours,

Assistant Administrator for
Solid Waste and Emergency Response

[or]

Regional Administrator

[or their designees]

Enclosure

cc: Honorable J. Smith, Governor

Appendix B

SAMPLE ORDER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In The Matter Of)
(Name of Person,)
Firm or Corporation))
) Docket No.__________
Proceeding Under Section 106(a) of the)
Comprehensive Environmental Response,)
Compensation and Liability Act of 1980)
(42 USC Section 9606(a)))

ORDER

The following Order is issued on this date to (insert name and address of person, firm or corporation, along with facility name or place of business if the Respondent is not the owner or operator) ("Respondent(s)"), pursuant to §106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 USC 9606(a)), by authority delegated to the undersigned by the Administrator of the United States Environmental Protection Agency (EPA). Notice of the issuance of this Order has heretofore been given to the State of _________ .

There is an imminent and substantial endangerment to the public health and welfare and the environment due to a (threat of a release)(release) of (a) hazardous substance(s) as defined in §101(14) of CERCLA (42 USC 9601(14)), from the following location (the "Facility"):

(insert legal description, if known;
otherwise, use street or route address)

This order directs you to undertake action to protect the public and the environment from this endangerment.

FINDINGS AND CONCLUSIONS

1. (Choose one or more of 1A through 1E, as appropriate under the factual situation of the case. Do not include headings.

1A. [(Present Owner)- Respondent is now, and has been since ________, 19___, the (owner)(and)(operator) of the Facility, as determined from (source of information)].

1B. [(Former owner/operator) - Respondent was, from ________, 19___, until ________________, 19___, the (owner)(and)(operator) of the Facility, as determined from (source of information). During that time, hazardous substances, including those described herein, were disposed of at the facility. Respondent sold or otherwise transferred and conveyed the Facility to ____________ on ________, 19___, according to (property records)].

1C. [(Generator) - Respondent (disposed of) (arranged, by contract or agreement, for the disposal or transport for disposal) of hazardous substances at the Facility as determined from (source)].

1D. [(Transporter) - Respondent chose to accept hazardous substances for transport to, and disposal at, the Facility as determined from (source)].

1E. [(Other Party) (Insert reasons why ordered actions are necessary to facilitate the abatement of the hazard, prevent th aggravation of the hazard, or otherwise protect the public health and welfare and/or the environment.)]

2. (Describe the nature of the facility.)

3. On or about the ______ day of ____________, 19___, an inspection of the Facility was conducted by ___(names)___, (a) duly authorized representative(s) of (EPA, State agency). At the time of that inspection, the inspectors observed the following conditions existing at the Facility:

A. Approximately 1000 drums of liquid, semi-solid and solid material, which were leaking, without covers and in various stages of corrosion, rusting and other deterioration, located directly on the ground. Material leaking from said drums was observed running approximately 25 yards across the site into Crystal Creek, which adjoins the Facility, and which is a tributary of Pristine River, a navigable water. According to records at the Facility, materials contained in the drums include:

(describe hazardous substances)

B. An area in the Facility (the "Landfill area") of approximately four (4) acres in size, without vegetation, from which leachate was observed flowing approximately forty (40) yards into Crystal Creek. Vegetation had been killed in the area of the leachate. According to records at the Facility, the following hazardous substances had been placed in the Landfill area:

(list hazardous substances-
then continue with the following)

At the time of the inspection, _____ samples of the drummed waste, samples of the leachate from the Landfill area, and _____ samples of (soil, surface water, groundwater, air, etc.) were obtained by the inspector(s).

4. An analysis of the samples taken at the time of the inspection disclosed the presence at the Facility of the following substances in the concentrations set forth:

(list hazardous substances and concentrations
confirmed by analysis - then continue with
following sentence)

These substances are "hazardous substances" as defined in §101(14) of CERCLA, and are subject to the terms and provisions of that Act.

5. The hazardous substances described above are treated or disposed of at the Facility in such manner that they (are being) (threaten to be) released and discharged from the Facility into the (soil, groundwater, surface water, air, etc.) and other parts of the environment.

6. (Describe population or environment at risk and route of exposure). Exposure to said hazardous substances may cause illness, disease, death or other harmful effects to plant and animal life and humans.

7. The (release) (and/or) (threat of release) of said hazardous substances may present an imminent and substantial endangerment to public health and welfare and the environment.

8. In order to protect human health and welfare and the environment, it is necessary that action be taken to contain and terminat the (release) (and/or) (threat of release) of hazardous substances from the Facility into the environment.

ORDER

Based upon the foregoing determinations and Findings of Fact, it is hereby Ordered and Directed that:

> (NOTE - the Respondent may be ordered to undertake any response activity that may be required to protect public health, welfare and the environment, including, but not limited to, those actions which the government is authorized to carry out under CERCLA.)
>
> (Insert here the response actions which EPA directs the Respondent to take at the site. Each activity, (i.e., redrumming of waste, construction of fencing, levees, submission of plans for installation of monitoring wells, etc.), and the date for compliance with each activity, should be listed separately.)
>
> (Insert a statement to the effect that other orders or action may follow.)

EFFECTIVE DATE - OPPORTUNITY TO CONFER

This Order is effective on the twentieth calendar day following receipt thereof by Respondent, and all times for performance of response activities shall be calculated from that date. (Note: For immediate removal situations, the effective date will be considerably abbreviated.)

You may, within ten calendar days after receipt of this Order, request in writing a conference with (Official) to discuss this Order and its applicability to you. (Note: For immediate removal situations, the time for requesting a hearing will be abbreviated. In addition, the Respondent should be informed that he or she may make an oral request for a conference, to be followed up by written notice within two to three days.)

At any conference held pursuant to your request, you may appear in person and by attorney or other representatives for the purpose of presenting any objections, defenses or contentions which you may have regarding this Order. If you desire such a conference, please contact (name, title, address and telephone number of EPA contact) within the time set forth above for requesting a conference.

PENALTIES FOR NON-COMPLIANCE

Respondent is advised that willful violation or failure or refusal to comply with this Order, or any portion thereof, may subject you under §106(b) of CERCLA, (42 U.S.C. §9606(b)), to a civil penalty of not more than $5000 for each day in which such violation occurs or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause, may subject you under §107(c)(3) of CERCLA, (42 U.S.C. §9607(c)(3)), to liability for punitive damages in an amount up to three times the amount of any costs incurred by the government as a result of your failure to take proper action.

WITNESS my hand in the City of ____________________, State of __________________, as (title of authorized EPA issuing official), on this _____ day of _________________, 19___.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: ____

APPENDIX

Authority/Requirements/Enforcement of Administrative Orders for Removal Actions under CERCLA

Under §106(a) of CERCLA:

If, EPA, acting on behalf of the President:

determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of

an actual or threatened release of a hazardous substance from a facility

may, after notice to the affected state,

issue such orders as may be necessary to protect public health and welfare and the environment.

Under §106(b) of CERCLA:

EPA may take action in the appropriate U.S. district court, against any person who willfully violates or fails or refuses to comply with any Order issued under §106(a), to enforce such order and

may fine such person not more than $5,000 for each day such violations occur or such failure to comply continues.

Under §107(c)(3) of CERCLA:

Any person who is liable for a release or threat of release of a hazardous substance that:

fails without sufficient cause to properly provide removal action upon order of the President pursuant to §106

may be liable to the United States for punitive damages in an amount at least equal to and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action.

Civil action may be commenced against any such person to recover the punitive damages. These punitive damages shall be in addition to any costs recovered from such person pursuant to §112(c).

Any monies received in punitive damages shall be deposited in the Fund.

National Contingency Plan Requirements for Immediate Removals

Under §300.65 of the NCP:

Immediate Removal action is appropriate when the lead agency determines that:

- the initiation of the removal action will prevent or mitigate immediate and significant risk of harm to human life or health or to the environment from such situations as:

  1. Human, animal, or food chain exposure to acutely toxic substances
  2. Contamination of drinking water supply
  3. Fire and/or explosion
  4. Similarly acute situations

Immediate removal action may include but are not limited to:

1. Collecting and analyzing samples to determine the source and dispersion of the hazardous substance
2. Providing alternative water supplies
3. Installing security fencing or other measures to limit access
4. Controlling the source of the release
5. Measuring and sampling
6. Moving hazardous substances off-site for storage, destruction, treatment or disposal
7. Placing physical barriers to deter the spread of the release
8. Controlling the water discharge from an upstream impoundment
9. Recommending to the appropriate authorities the evacuation of threatened individuals
10. Using chemicals and other materials in accordance with Supart H to restrain the spread of the substance and mitigate its effects
11. Executing damage control or salvage operations

APPENDIX 19

RESPONSIBLE PARTY ACTIONS (EXAMPLES)

RESPONSIBLE PARTY ACTIONS (EXAMPLES)

Responsible Party Cleanup

(1) Accidental Chemical Spill

A truck accidentally struck eight 55-gallon drums of waste located at a manufacturing facility. Several drums ruptured, spilling hydrochloric acid and waste oils. The acid and waste oils reacted producing a mushroom cloud which spread contaminated soils over an unsecured area approximately 60 feet by 15 feet. Public health was threatened by direct contact and inhalation. Responsible party response, following issuance of a CERCLA 106 order, involved drum removal and excavation of soils to a depth of 10 inches. Responsible party action was satisfactory and the case was closed.

(2) Midnight Dumping

Thirteen five-gallon pails of acids and caustics were dumped on the roadside near a local park. The main threat was direct contact with some of the pails that had begun to leak. The Region contacted the responsible party who agreed to dispose of the materials. The responsible party located a recycling facility and removed the materials. Responsible party action was satisfactory and the case was closed.

Responsible Party Takeover

(1) Local Dump Contaminated

A private trash dump located in a residential area accepted drums containing solvents, heavy metals and flammable liquids for recycling. The owner was unable to arrange quickly for recycling. The drums began to leak, creating a fire/explosion hazard, a threat to ground water and threat by direct contact. The Region initiated sampling, staged 274 drums on the site and removed the contaminated soil immediately adjacent to the drums. Under the CERCLA 106 order, the responsible party disposed of all of the drums off-site. Responsible party action was completed satisfactorily and the case was closed.

(2) Active Salvage Yard and Tank Farm

Surface runoff, soil contamination and potential fire/explosion hazard from an active salvage yard with storage tanks, drums and pits containing coal-tar wastes and ravines filled with flourescent light glass and other debris threatened the surrounding area. The Region initiated a Fund-financed response to install filter and silt control fences to divert surface runoff to a local river less than 1/4 mile away. Following issuance of the CERCLA 106 order, the responsible party removed all coal-tar wastes, and began excavation of debris and contaminated soils. After two months, the responsible party had completed all cleanup in the main tank farm area, the tar pits and the ravines. Responsible party action was satisfactory and the case was closed.

EPA Takeover

(1) Active Transformer Storage Facility

An unfenced, transformer storage facility had leaking transformers and drums containing PCB-contaminated oils on site. The facility was located in the middle of a town surrounded by a residential area. The nearest dwelling was within 15 feet of the site. PCBs were found in a drainage ditch that led to a nearby river. The responsible party agreed to a CERCLA 106 order to conduct cleanup, but did not respond in a timely manner. The Region took over action and mobilized the ERCS contractor to initiate removal of the leaking drums and transformer.

(2) Pesticide Fire

A storage shed located behind a food market in a residential area containing a sizeable volume of pesticides, herbicides and flammable liquids caught fire. Sampling indicated a high level of pesticide contamination in soil around the shed and within 40 feet of a private well. Direct contact with the chemicals and contamination of ground water posed the major threats. The Region responded to the fire and contacted the responsible party. The responsible party agreed to a CERCLA 106 order. After two weeks, the Region determined the party could not carry out response in a timely manner and mobilized the ERCS contractor to remove contaminated soil.

LIST OF ACRONYMS

AA — Assistant Administrator

AO — Administrative Order

AOC — Administrative Order on Consent

ATSDR — Agency for Toxic Substances and Disease Registry

AEA — Atomic Energy Act

BFS — Budget Forecasting Section

CA — Cooperative Agreement

CAA — Clean Air Act

CDC — Centers for Disease Control

CERCLA — Comprehensive Environmental Response, Compensation, and Liability Act of 1980

CERCLIS — Comprehensive Environmental Response, Compensation, and Liability Information System

COE — U.S. Army Corps of Engineers

CLP — Contract Laboratory Program

CRP — Community Relations Plan

CWA — Clean Water Act

DCN — Document Control Number

DDAG — Dioxin Disposal Advisory Group

DO — Delivery Order

DOC — Department of Commerce

DOD — Department of Defense

DOE — Department of Energy

DOI — Department of Interior

DOJ — Department of Justice

DOL — Department of Labor

DOS — Department of State

DOT — Department of Transportation

DPO — Deputy Project Officer

DWEL — Drinking Water Equivalent Level

EPA — Environmental Protection Agency

ERA — Expedited Response Action

ERCS — Emergency Response Cleanup Services

ERD — Emergency Response Division
ERNS — Emergency Response Notification System
ERT — Environmental Response Team
ESD — Environmental Services Division
FAMS — Financial and Administrative Management Section
FCC — Funds Control Center
FEMA — Federal Emergency Management Agency
FERP — Federal Emergency Radiological Plan
FFC — Federal Facilities Coordinator
FIFRA — Federal Insecticide, Fungicide and Rodenticide Act
FIT — Field Investigation Team
FMD — Financial Management Division
FMO — Financial Management Officer
FMS — Financial Management System
Fund — Hazardous Substance Superfund
FWPCA — Federal Water Pollution Control Act
G-WPS — Ground-Water Protection Strategy
HHS — Department of Health and Human Services
HQ — EPA Headquarters
HSCD — Hazardous Site Control Division
HSWA — Hazardous and Solid Waste Amendments of 1984
IAG — Interagency Agreement
IRM — Initial Remedial Measure
MCL — Maximum Contaminant Levels
MCLG — Maximum Contaminant Levels Goals
MOU — Memorandum of Understanding
NAWQC — National Ambient Water Quality Criteria
NCLP — National Contract Laboratory Program
NCP — National Oil and Hazardous Substances Pollution Contingency Plan
NEIC — National Enforcement Investigation Center
NEPA — National Environmental Policy Act
NOAA — National Oceanic and Atmospheric Administration
NIOSH — National Institute of Occupational Safety and Health
NPL — National Priorities List
NRC — National Response Center or Nuclear Regulatory Commission

NRT -- National Response Team

NTP -- Notice to Proceed

OERR -- Office of Emergency and Remedial Response

OECM-W -- Office of Enforcement and Compliance Monitoring - Waste

OGC — Office of General Counsel

O&M — Operation & Maintenance

OMB — Office of Management and Budget

OPA -- Office of Public Affairs

ORC — Office of Regional Counsel

ORP — Office of Radiation Programs

OSC — On-Scene Coordinator

OSHA -- Occupational Safety & Health Administration

OSW — Office of Solid Waste

OSWER -- Office of Solid Waste and Emergency Response

OWPE -- Office of Waste Programs Enforcement

PCMD — Procurement and Contracts Management Division

POLREP -- Pollution Report

PR -- Procurement Request

PRP — Potentially Responsible Party

PRSC -- Post Removal Site Control

RA -- Regional Administrator

RC — Regional Coordinator

RCRA -- Resource Conservation and Recovery Act

REAC -- Response Engineering and Analytical Contract

REM -- Remedial Planning and Construction

REO — Regional Environmental Officers

RfD -- Reference Dose Level

RFP -- Request for Proposal

ROB — Response Operations Branch

RP — Responsible Party

RPM — Regional Project Manager

RQ — Reportable Quantity

RRC — Regional Response Center

RRFS -- Remedial and Removal Financial System

RROC -- Regional RCRA Off-Site Coordinator

RRT — Regional Response Team

RSCC — Regional Sample Control Center

RSPA — Research and Special Programs Administration

RTP — Research Triangle Park

RTS — Removal Tracking System

SARA — Superfund Amendments and Reauthorization Act of 1986

SCAP — Superfund Comprehensive Accomplishments Plan

SDWA — Safe Drinking Water Act

SSC — Superfund State Contract

SSC — Scientific Support Coordinators

SOW — Statement of Work

SPMS — Strategic Planning and Management System

TAT — Technical Assistance Team

TDD — Technical Direction Document

TES — Technical Enforcement Support

TPC — Total Project Cost

TSCA — Toxic Substances Control Act

USCG — United States Coast Guard

USDA — United States Department of Agriculture

USGS — United States Geological Survey

USN — United States Navy

VOC — Volatile Organic Chemicals

GLOSSARY

GLOSSARY

104(b) INVESTIGATIONS: Investigations, monitoring, surveys, testing, and other information gathering as deemed necessary or appropriate to identify the existence and extent of the release or the threat of release, the source and nature of the hazardous substances, pollutants or contaminants involved and the extent of danger to public health or welfare or the environment. In addition, EPA may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations to plan or direct response actions, to recover the costs thereof, and to enforce the provisions of CERCLA, as amended. These costs and the time spent implementing the 104(b) activities are exempt from the twelve-month/$2 million statutory limitations.

ACTION MEMORANDUM: The internal EPA document that serves as a written record of Regional or HQ approval of Superfund financing of a removal action. The Action Memorandum describes site conditions, including the nature of the release, the actual or potential threats, enforcement strategy and proposed costs and actions. An Action Memorandum is also the appropriate format for requesting and obtaining ceiling increases, exemptions to the twelve-month and $2 million limits, and redistribution of funds because of changes in the scope of work.

ACTIVE PRODUCTION FACILITY: Any ongoing operations that manufacture, recycle, handle, store, or transport hazardous materials or waste as a primary ingredient, product or by-product of operations or any location contaminated due to off-site migration of hazardous materials or wastes from such operations.

ACTIVE WASTE MANAGEMENT FACILITY: Any ongoing legal or illegal operation or site whose primary purpose is to handle, exchange, transfer, store, treat, or dispose of hazardous materials or wastes or any location contaminated due to off-site migration of hazardous materials or wastes from such a facility or site.

ADMINISTRATIVE ORDER ON CONSENT (AO): A legal agreement issued by EPA and signed by EPA and potentially responsible parties (PRPs). It contains the details of a settlement whereby PRPs will conduct all or part of the cleanup at a site. It may be subject to a public comment period, and is enforceable in court.

ADMINISTRATIVE RECORD: A file established in compliance with the requirements set forth in §113(k) of CERCLA, as amended, consisting of information upon which EPA bases its decision on the selection of response actions. The Administrative Record should be established at or near the facility at issue and made available to the public.

ALLOWABLE COSTS: Costs that are eligible, reasonable, necessary, and allocable; are permitted under the appropriate Federal cost principles; and are in accordance with EPA policy. Examples are: contractual services, response by State employees (under a Cooperative Agreement or contract), materials and supplies, equipment, other direct costs and indirect costs.

ALLOWANCE: An amount established during the budgeting process signifying the level of resources at which an organization can operate. An allowance serves as a spending limit from which commitments and obligations are withdrawn. In terms of EPA's Superfund program, an allowance is that portion of the CERCLA Superfund dispensed by the EPA comptroller to the Regions for carrying out program activities. The Regions' removal allowance typically covers cleanup contractor costs, which include ERCS or other cleanup contractor costs, State costs procured through a letter contract, and other Federal agency costs procured through IAGs.

APPROVAL DATE: The date on which the removal action was approved by the appropriate official.

CASE CLOSED: A removal action is considered closed when on-site activities have been completed and all administrative work has been completed. This includes final OSC reports and payment for contract services. The Regional Coordinator is responsible for designating an action to be "closed." Unlike "completion date," dates for "case closed" are not tracked in the RTS/SCAP system.

CEILING INCREASES: The Action Memorandum initially approving the removal action establishes a ceiling on total costs that EPA may spend on the response. A ceiling increase, once requested and approved, raises the total approved costs.

CLAIM: A demand in writing for a sum certain.

CLASSIC EMERGENCY: An action where the release requires that on-site activities be initiated within hours of the lead agency's determination that a removal action is appropriate. A classic emergency includes, but is not limited to, a release exhibiting one or more of the following characteristics: 1) released into the environment for a relatively short time; 2) released as a result of an accident, fire, explosion or failure of container or handling system; 3) released from a transportation-related source or from an active or operating facility; and 4) intentionally released in an isolated (one-time) incident to an area not used (presently or previously) to store or dispose of chemical wastes (i.e., a "midnight dump").

CLEANUP: Actions undertaken during a removal or remedial response to physically remove or treat a hazardous substance that poses a threat or potential threat to human health and welfare and the environment and/or real and personal property. Sites are considered cleaned up when EPA removal or remedial programs have no further expectation or intention of returning to the site and threats have been mitigated or do not require further action.

CLEANUP CONTRACTOR CEILING: One of several cost categories that make up the total project ceiling. These costs are funded from each Region's removal allowance and include ERCS or other cleanup contractor costs, State costs procured through letter contract, and other Federal agency costs procured through IAGs.

COMMITMENT: An amount formally reserved to cover an expected obligation. A commitment reflects the intention to obligate funds to a specific activity.

COMMUNITY RELATIONS PLAN (CRP): A plan for all responses lasting longer than 45 days, that addresses local citizens' and officials' concerns about a hazardous waste release and for integrating community relations activities into the technical response at a site. The CRP should help prevent disruptions and delays in response actions and partially fulfill the NEPA requirement for public notification and participation.

COMPLETION DATE: The actual date that the cleanup contractor or the OSC has demobilized, completing the scope of work in the Action Memorandum and the disposal of waste is completed as set forth in the Action Memorandum or subsequent modifications. If the Action Memorandum's scope of work includes the ultimate disposal of wastes, then the date the site's wastes are received for final disposal would be the completion date. However, if the Action Memorandum's scope of work does not include off-site disposal, then the completion date would be the date the contractor left the site. Temporary demobilization and on-site temporary storage are not considered completions unless temporary storage was the only action identified in the Action Memorandum. Likewise, temporary off-site storage of hazardous substances at a storage, treatment and disposal (TSD) facility other than the facility of ultimate disposal is a continuation of the removal action, not a completion.

COOPERATIVE AGREEMENT (CA): An assistance agreement whereby EPA transfers money, property, services, or anything of value to a State for the accomplishment of certain activities, subactivities, or tasks, as authorized by CERCLA. It assumes a significant Federal involvement in the State's performance of these activities.

COST RECOVERY: The process by which Federal costs of response actions and damage to natural resources are recovered from responsible parties as provided for in section 107(a) of CERCLA, as amended by SARA.

DISCOVERY: Discovery refers to the notification, observance, or detection of a release or substantial threat of release or discharge of a hazardous substance or oil into the environment. A discovery may be made through notification or investigation in accordance with statutory requirements, incidental observation by government agencies or the public, notifications by permit holders or inventory efforts conducted by Federal, State or local agencies.

DISPOSAL: The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

DRINKING WATER HEALTH ADVISORY: EPA's Office of Drinking Water's supplement to the Federal drinking water standards. 10-day, 1-day and chronic advisories are issued for a variety of substances that otherwise have no standards.

ENVIRONMENT: The navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

EVACUATION: Immediate and emergency actions undertaken to remove people from an affected area, typically following a classic emergency. Such actions are short in duration and continue until the immediate threat of exposure has subsided.

EXPEDITED RESPONSE ACTION: A removal action led by a Remedial Project Manager and carried out by remedial contractors who are either in the process of conducting or are scheduled to initiate a response activity. ERAs have been designed to address those situations at NPL sites which were previously performed as initial remedial measures (e.g., fences, drainage controls, alternative water supplies).

EXTRAMURAL COSTS: CERCLA funds expended for services and equipment outside of EPA. In the Superfund removal program, these costs include, but are not limited to, cleanup contractor and consulting costs; support contractor costs; other Federal agency vendor and out-of-pocket costs; and costs for State and local assistance obtained through a procurement contract.

FACILITY: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

FEDERALLY PERMITTED RELEASE: Discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act; discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act; releases in compliance with a legally enforceable final permit issued pursuant to sections 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases; any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research and Sanctuaries Act of 1972; any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of EPA) pursuant to Part C of the Safe Drinking Water Act; any emission into the air subject to a permit or control regulation under section 111, section 112, Title 1 Part C, Title 1 Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of EPA), including any schedule or waiver granted, promulgated, or approved under these sections; any injection of fluids or other materials authorized under applicable State law (1) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (2) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (3) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected; the introduction of any pollutant into a publicly-owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the CWA and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act; and any release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

FUND, SUPERFUND OR TRUST FUND: The Hazardous Substances Superfund established by section 9507 of the Internal Revenue Code of 1986.

GROUND WATER: Water in a saturated zone or stratum beneath the surface of land or water.

HAZARDOUS SUBSTANCE: Any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

HAZARDOUS WASTE: A solid waste, or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious charcteristics may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious, irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

IMMEDIATE REMOVAL: The revised NCP no longer distinguishes between "immediate" and "planned" removals. Immediate removals were previously defined as actions taken to prevent or mitigate immediate and significant risk of harm to human life or health or the environment from actual or threatened releases of hazardous substances.

INACTIVE PRODUCTION FACILITY: Any facility no longer in operation that manufactured, recycled, handled, stored or transported hazardous materials or wastes as a primary ingredient, product or by-product of operations or any location contaminated due to off-site migration of hazardous materials or wastes from such previous operations.

INACTIVE WASTE MANAGEMENT FACILITY: Any former legal or illegal operation or site whose primary purpose was to handle, exchange, transfer, store, treat or dispose of hazardous materials or wastes or any location contaminated due to off-site migration of hazardous materials or wastes from such facility or site.

INITIAL REMEDIAL MEASURE (IRM): IRMs are no longer used for remedial actions. They previously were defined as remedial implementation subactivities that could be undertaken during remedial response to limit exposure or threat of exposure to a significant health or environmental hazard or to stabilize an existing situation at a site in order to permit the implementation of additional actions. IRMs were response actions taken prior to the selection of final remedial measures. The revised NCP redefined the response category of removals to include all activities formerly categorized as IRMs.

INTERAGENCY AGREEMENT (IAG): A written agreement, enforceable by law, between EPA and another Federal agency where goods and/or services are provided, whether or not in exchange for monetary reimbursement, or where policy agreements are delineated. IAGs for CERCLA activities may function both as obligating documents and as reporting documents necessary for EPA financial and program management.

INTRAMURAL COSTS: CERCLA funds expended for costs internal to EPA. For Superfund removals, these include EPA direct costs such as salaries, travel, and per diem of on-site EPA personnel, supplies, direct equipment rental and maintenance; direct costs incurred by ERT; and indirect costs, including EPA HQ and Regional administrative and management costs and EPA laboratory costs.

LEAD AGENCY: The Federal agency (or State agency, political subdivision or Indian tribe operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA, as amended by SARA) that has primary responsibility for coordinating response action under the NCP. A Federal lead agency is the agency that provides the OSC. In the case of a State as lead agency, the State shall carry out the same responsibilities delineated for OSCs in the NCP (except coordinating and directing Federal agency response actions).

LETTER CONTRACTS WITH STATE AND LOCAL GOVERNMENTS AND INDEPENDENT CONTRACTORS: One mechanism by which EPA procures the services of States, localities and independent contractors to perform specific activities at EPA-lead removal projects. They are non-competitive and have stringent restrictions on their use.

MEMORANDUM OF UNDERSTANDING (MOU): An agreement between EPA and another agency (Federal, State, or local) that sets forth basic policies and procedures governing their relationship on matters of mutual interest and responsibility. There is no exchange of funds under this type of agreement. In the context of this document, an MOU usually refers to one type of agreement that may be negotiated between EPA and another Federal agency to delineate the role of that agency in EPA or USCG-lead removals.

MIDNIGHT DUMP: Any classic, illegal dumping of hazardous substances into the air, land, water or other element, whether accidental or deliberate.

NATIONAL CONTINGENCY PLAN (NCP): Officially known as the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300), the NCP outlines the responsibilities and authorities for responding to releases into the environment of hazardous substances and other pollutants and contaminants under the statutory authority of CERCLA and section 311 of the Clean Water Act (CWA).

NATURAL RESOURCES: Land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of fishery conservation zones established by the Magnuson Fishery Conservation and Management Act), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

NON-TIME-CRITICAL: Refers to removals where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of more than six months available before on-site activities must begin. The lead agency will undertake an Engineering Evaluation/Cost Analysis (EE/CA) for non-time-critical removals.

NOTICE LETTER: An EPA enforcement action intended to notify PRPs of their potential liability and their rights. Notice letters are a first step in determining whether a PRP is willing and financially capable of undertaking a proper response.

NOTIFICATION: Section 103(a) of CERCLA, as amended by SARA, requires that any person in charge of a vessel or an onshore or offshore facility notify the National Response Center (NRC) as soon as he/she has knowledge of any release of a hazardous substance or pollutant or contaminant involving a reportable quantity (RQ). EPA has issued a final rule on reportable quantities and notification requirements (50 FR 13456, April 4, 1985, 51 FR 34534, September 29, 1986).

OBLIGATION: The amount of orders placed, contracts awarded, services received, and similar transactions during a given period that will require payments during the same or a future period. These will include outlays for which obligations have not been previously recorded and will reflect adjustments for differences between previously recorded obligations and actual outlays to liquidate those obligations (OMB Circular A-34).

OFFSHORE FACILITY: Any facility of any kind located in, on, or under any of the navigable waters of the U.S. and any facility of any kind that is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel.

OFF-SITE DISPOSAL: Transport of hazardous substances from a CERCLA removal site to a RCRA-approved facility for storage, treatment, destruction or secure disposition. Off-site disposal must be in accordance with section 121(d)(3) of CERCLA as amended by SARA, and EPA's off-site disposal policy, entitled "Procedures for Planning and Implementing Off-site Response Actions" (memorandum from the AA, OSWER to the RAs, May 6, 1985).

ON-SCENE COORDINATOR: The Federal official predesignated by the EPA or USCG to coordinate and direct Federal responses under Subpart E and removals under Subpart F of the NCP; or other Federal agency officials designated to coordinate and direct the removal actions from releases of hazardous substances or pollutants or contaminants from facilities under their jurisdiction.

ONSHORE FACILITY: Any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States.

PLANNED REMOVAL: Under the previous NCP, a removal action at an incident that (1) could not await listing on the NPL for the initiation of response or (2) allowed more time than an immediate removal to plan the response, but that still required expeditious attention to prevent/mitigate risk to public health, welfare or the environment. Planned removals are not conducted under the current NCP.

POLLUTANT OR CONTAMINANT: Includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and synthetic gas). For purposes of Subpart F of the NCP, the term pollutant or contaminant means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare.

POLLUTION REPORTS (POLREPs): Reports submitted by the On-Scene Coordinator to EPA Headquarters to report on a release, the decision to activate the Fund, and progress at the response (including a description of activities and status of funding).

POST REMOVAL SITE CONTROL (PRSC): Refers to those activities that are necessary to sustain the integrity of a removal action following its conclusion. Post-removal site control activities, such as relighting gas flares, replacing filters, and collecting leachate, are necessary for assuring the continuing effectiveness of a removal after the completion of the on-site response or after the $2 million or 12 month statutory limits are reached. Post-removal site control continues until such time as: 1) a potentially responsible party, a unit of State or local government, or the remedial program implements a permanent remedy; or 2) no further site control is needed.

PRELIMINARY ASSESSMENT: An evaluation of the extent of release and degree of threat to human health and the environment in order to determine whether the release meets the criteria for a CERCLA-funded removal.

PROCUREMENT REQUEST: The document for committing funds under a contract between EPA and a private firm.

PROJECT CEILING: Represents the total funding approved for a removal action and is established in the initial removal Action Memorandum. The total project ceiling is comprised of an itemized breakout of the following cost categories: cleanup contractor, letter contracts with States, site-specific IAGs, TAT, NCLP analytical services, ERT/REAC, and EPA intramural costs. RAs may authorize ceilings up to $2 million, provided the project is not expected to exceed that amount or is not a non-NPL site involving a nationally significant or precedent-setting issue. Costs that would exceed the project ceiling require a ceiling increase, which must be approved through a ceiling increase request.

REGIONAL COORDINATOR (RC): The ERD staff member designated to provide liaison with and assistance to a specific Region. RCs assist in preparing annual and quarterly SCAPs, clarify program policy and procedure, and assist in preparing and coordinating HQ review and approval processes.

REGIONAL SUPERFUND COMMUNITY RELATIONS COORDINATOR (RSCRC): The Regional office staff person responsible for designing and implementing a site-specific community relations program. The RSCRC works closely with the site's OSC to coordinate site-specific community relations activities and to establish community relations profiles and plans, when appropriate.

RELEASE: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or disgarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For the purpose of the NCP, release also means substantial threat of release.

RELOCATION: The provision of housing for populations at risk from a release of hazardous substances. The relocation may be for a few days or several months and lasts until the threat is eliminated or reduced to safe levels. Relocation may consist of (1) permanent relocation of residents, businesses, and community facilities, and (2) temporary relocation of threatened individuals. At the present time, the removal program conducts only temporary relocation with the exception of certain dioxin sites in the State of Missouri, as explicitly provided for in section 118 of SARA.

REMEDIAL PROJECT MANAGER (RPM): The designated EPA Regional official who coordinates, manages, and monitors site activities covered in both EPA and State-lead remedial responses. RPMs also may be designated by the USCG or other Federal agencies to coordinate and direct Federal remedial or other response actions resulting from releases of hazardous substances or pollutants or contaminants from USCG vessels or other Federal agency facilities or vessels, respectively.

REMOVE OR REMOVAL: Remove or removal means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary to be taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necesary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, that may otherwise result from such release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, as amended by SARA, and any emergency assistance that may be provided under the Disaster Relief Act of 1974.

REPORTABLE QUANTITIES (RQs): The quantity of a hazardous substance that, if released into the environment, may present substantial danger to the public health or welfare or the environment and must be reported to either the National Response Center or EPA. RQs are set forth in 40 CFR 302.

RESPONSIBLE PARTY: Person liable under section 107(a) of CERCLA, as amended by SARA, for response costs and natural resource damage: (1) the owner or operator of a vessel or a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, (3) any person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and (4) any person who accepts or accepted any hazardous substance for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there was a release or a threatened release which causes the incurrence of response costs, of a hazardous substance.

RESTART: The initiation of new on-site removal activities at an incident for which CERCLA funds have previously been expended for removal activities. Restarts generally are initiated in response to uncontrollable situations caused by unforeseen occurrences such as adverse weather conditions, vandalism, fire or explosion or other unanticipated catastrophes.

SCOPE OF WORK: The specific set of response activities approved in the removal Action Memorandum.

SITE: An area or a location at which hazardous substances have been stored, treated, disposed of, placed, or otherwise came to be located. This includes all contiguous land, structures, other appurtenances, and improvements on the land used for treatment, storage, or disposal of hazardous substances. A site may consist of several treatment, storage, or disposal facilities (e.g., impoundments, containers, buildings, or equipment).

SITE/SPILL-ID: A unique two-character alphanumeric site identification number obtained from the Regional Financial Office for Regionally-funded removals or from Headquarters Funds Control Center for Coast Guard removals.

STABILIZATION: Activities to mitigate an immediate threat while EPA considers possible further action.

START DATE: The date on-site removal activity authorized in the Action Memorandum is initiated at an incident for which no CERCLA or 311 funds have been used previously.

STATUTORY LIMITS ON REMOVALS: Limitation of removal actions under section 104(c)(1) of CERCLA, as amended by SARA, to twelve months duration or $2 million obligations from the date of initial response unless the lead agency grants an exemption in accordance with one of the two exemptions set forth in section 104(c)(1). These are: (A) continued response actions are immediately required to prevent, limit, or mitigate an emergency; there is an immediate risk to public health or welfare or the environment; and such assistance will not otherwise be provided on a timely basis or (B) continued response action is otherwise appropriate and consistent with remedial action to be taken. Costs of removal activities conducted under section 104(b) of CERCLA do not count toward $2 million limit.

STOP WORK ORDER: A form prepared by an Ordering Officer, OSC, or Contracting Officer requiring the contractor to stop all, or any part, of the work called for in a Delivery Order.

STORAGE: The containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

SUPERFUND STATE CONTRACT (SSC): A bilateral contract between EPA and a State that is legally binding on both parties. The SSC is not a procurement contract, but is used to document EPA and State responsibilities and to obtain any necessary State assurances for planned removals under the former NCP and for EPA-managed remedial responses. An SSC is appropriate for any EPA-lead response activities that require State cost-sharing.

TIME-CRITICAL: Refers to removals where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a period of less than six months available before on-site activities must be initiated.

TRANSPORTATION-RELATED INCIDENT: Any release or potential release of hazardous substances due to a transportation situation, accident or malfunction.

TREATMENT: Any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

TRUSTEE: Any Federal natural resources management agency designated in Subpart G of the NCP, and Section 1(c) of E.O. 12580 and any State agency that may pursue claims for damages under section 107(f) of CERCLA, as amended by SARA.

ULTIMATE DISPOSAL: The final disposal of hazardous substances resulting from a removal action. It does not include temporary storage or other temporary measures of managing the waste from a removal action.

UNILATERAL ADMINISTRATIVE ORDER: A legally enforceable order issued by EPA to compel potentially responsible parties to comply with an Administrative Order on Consent. It is EPA policy to proceed with a unilateral Administrative Order if PRPs fail to respond appropriately to the request, provided necessary criteria are met.

VESSEL: Every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

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